

**FREEDOM
OF
INFORMATION
AND
OPEN
GOVERNMENT**



FREEDOM OF INFORMATION & OPEN GOVERNMENT

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FREEDOM OF INFORMATION

AND OPEN GOVERNMENT

The Report of a Study Group of the
Hutt Valley Branch of the N.Z. Federation
of University Women (Inc.)

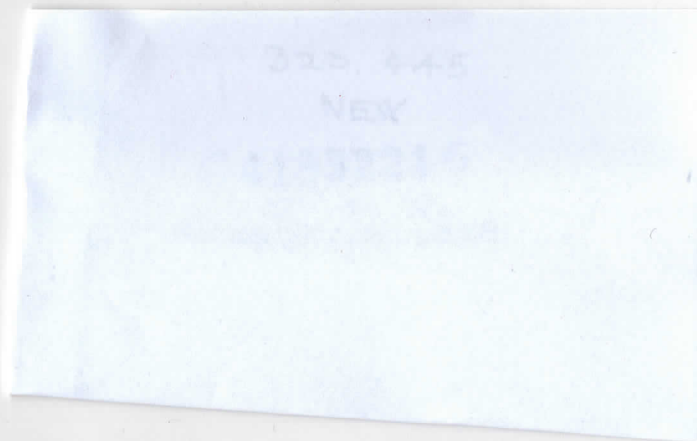
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Copies of this report may be obtained by sending a postal note or cheque for \$1.50 to the Hutt Valley Federation of University Women, C/o Dunne, 16 Oak Street, Upper Hutt.

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FOREWORD

In 1977, some members of the Hutt Valley Branch of the New Zealand Federation of University Women embarked on a study of the availability of official information, and the conflict inherent in reconciling the citizen's right to know with his right to privacy and security.

The study proved a more complex one than was at first envisaged, but the group found it valuable, providing as it did a basis from which to judge the issues now coming under public scrutiny.

To assist others wishing to obtain a similar background the material collected is now offered in this report.

K. Offer
Branch President, HVFUW
1978

INTRODUCTION

"An overly strict cloak of privacy for governmental affairs can cover manipulation of the public, misuse of office and aggrandizement of power by government agencies."

"Though the traditional democratic belief in an open governmental process should operate to weight the balance between privacy and disclosure in favour of earlier disclosure and greater visibility for certain aspects of government's decisional process, it should not be seen as denying the claim to privacy."

Alan F. Westin, "Privacy and Freedom"

Freedom of information, privacy, open government: these terms are now commonplace. Increasingly, individuals and groups in the private sector find themselves in conflict with government institutions. Increasingly, citizens' pressure groups are formed to persuade the Government of the day to change its policy in one area or another. These groups cut across party lines and sometimes gain massive public support. Examples are the Save Manipouri Campaign, the Campaign for Non Nuclear Futures, the Native Forests Action Council, Repeal and Oasis B.

Our system of government no longer seems to satisfy the public at large or even many of our members of Parliament. What is the cause of this concern?

The answer lies in the distortions and tensions which have occurred in our traditional system of government. It was designed to suit a less complex society in which the rate of change was relatively slow. As Governments have attempted to respond to increasingly complex problems in a climate of increasingly complex and fast changing technology there has been a gradual shift in power from Parliament and the Courts to Cabinet, the Executive Council and Government Departments. Another and

important factor undermining our system of Parliamentary Democracy is the pressure put on government by a well educated and articulate community which wants to take a more direct part in the decision making process. Many people are no longer satisfied by casting their vote at each General Election and then leaving their chosen representatives to get on with the business of government.

At the level of individual citizens, dissatisfaction with the structures and methods of Government often manifests itself in dissatisfaction with the collection, classification or dissemination of information.

The citizens' pressure groups mentioned earlier all had complaints about the flow of information between Government and the public and/or between Government Departments. Could massive public protest such as this have been avoided if more information had been available to the public and Members of Parliament well before policy decisions were taken? Could it have been avoided if the mechanisms by which the public have their say were seen to work effectively? Do public servants and Members of Parliament ever suffer from information overload and if so what can be done about it?

The sheer volume of information and the practical difficulties of obtaining it are in themselves barriers to its free flow within the community. Thus, the quantity and scope of legislation affecting the lives of each individual is constantly increasing. We have reached the absurd state in which new regulations intended to help a particular group of people can be passed and then virtually forgotten. The efforts made to disseminate information and get help where it is needed are often ineffectual. Examples include the Rent Appeal Act 1973 and the various Health and Welfare services available to those with special needs. Again the same kind of question can be asked. Could hardship and conflict be reduced by improving the information flow from Government departments to the public?

Observations and questions such as these were the starting point of this study. We have concerned ourselves with finding out how the flow of information in the community is affected by laws at present in the statute

book and how it is affected by the traditions, customs and attitudes of Government and the Public Service. In addition we have studied the actual or proposed freedom of information legislation in other western democracies in an attempt to see New Zealand's situation in a wider context and to see if there are lessons to be learned from the experience of these countries.

By presenting a variety of case histories and highlighting the issues they raise, we hope to illustrate the extent of the problem. There seem to be a variety of ways in which to satisfy public demand for a change in the balance between free, private and secret information. We list a number of these. It is important to distinguish between changes which are likely to put more pressure on our present system of Government and changes which are of a more fundamental nature. The demand for freedom of information may be only a symptom of a more general concern for the state of Government in this country. We believe it is essential for New Zealanders to face these issues now and to develop a style of Government which suits the times and which is also in tune with their values.

FREEDOM OF INFORMATION

Freedom of Information exists in a community when the people have right of access to all the information available to Government. This includes reports from internal committees and outside advisory committees: all other factual and statistical material; feasibility studies, cost benefit analyses and efficiency audits; government contracts and leasing arrangements; the internal law that applies in the administration of benefits, subsidies etc; reports prepared by agencies regulating environmental, industrial, agricultural and health laws; economic forecasts; etc.

It is normally understood that some exceptions to this principle exist where the information could endanger national security, impair the effectiveness of the police or be an invasion of an individual's privacy. Democracy is government by the people or their representatives. Therefore if we wish to continue to place a high value on democracy it can be argued that the "right to know" must also be given a high priority. People ignorant of the basis for government decisions cannot participate effectively in the decision making process, whether at the ballot box or in any other way.

On the other hand, if we value efficiency and trust our elected representatives, and the checks and balances of the system they work in, it can be argued that freedom of information would slow down the decision making process by allowing more people to become involved. This could result in opportunities lost and an inability to cope adequately with changing circumstances.

NATIONAL SECURITY

This is the ability of a nation to control its OWN destiny. Information endangers national security if its availability could affect the outcome of certain police and security service investigations, diplomatic, economic and trade negotiations and discussions and military operations. The free availability of some technological information would also endanger national security.

PRIVACY

With respect to information this means that it is available at the discretion of the person it concerns or the person or group that generated it. E.g. personal information about each citizen; trade secrets and financial information given by private individuals and companies to the government.

Even if a high priority is given to freedom of information and open government there is still a case for some privacy within government and the public service. For example, it can be argued that unless the minutes and memos arising from departmental meetings can be regarded as private, the free exchange of views and the exploration of new ideas which often takes place at such meetings will be seriously inhibited.

The natural desire of human beings for a degree of privacy places a limit on both freedom of information and the surveillance of individuals by government agencies such as the Police, Social Welfare Department and the Security Intelligence Service.

SECRET INFORMATION

Such information is not available in any circumstances to the public. Secrecy can best be justified on the grounds of national security. Information that is secret is often obtained secretly. This raises the question of what safeguards society should place against the indiscriminate use of secret methods of surveillance of its citizens.

OPEN GOVERNMENT

Open Government exists when there is freedom of information and also systematic efforts by Government to promulgate the information. In addition, open government includes, as a general rule, public access to Parliamentary committee hearings. It also requires government to test public opinion on issues and on possible new policies well in advance of decisions being taken.

REFERENCES

Westin, Alan F. "Privacy and Freedom", Bodley Head 1970
McMillan, John, NZ Law Journal Articles, July 1977

SOME CASE HISTORIES

"Open government will not make life easier for Ministers.
More information means more informed criticism."

"But, open government does produce better decisions and make it more difficult for a government to pursue a policy which has gone off the rails. It makes it more likely that government will examine all sides of the argument before deciding what to do."

The Guardian Weekly, Vol 119, No. 5, 30th July 1978

The case histories which follow were told to us by individuals who were directly involved. Each person had the opportunity to read and comment on the final copy.

Each story is a record of events as seen from the point-of-view of an individual who had been frustrated in his/her attempts to obtain and/or publicise information which they considered to be in the public interest.

It is possible that the official view of these events may be somewhat different. Nevertheless the important question of who is to judge the public interest remains, and at the very least communication problems have been revealed.

We feel that it is relevant to this study to record here that we heard three case histories which we are unable to publish. All the individuals concerned felt that their freedom of expression had been restricted directly by use of the Official Secrets Act. All were concerned that if identified their careers might suffer. The information they either passed on, or wished to pass on to the public seemed quite harmless.

CAMPAIGN FOR NON NUCLEAR FUTURES

This group had great difficulty getting technical information about electricity supply and demand from the New Zealand Electricity Department. They wished to prepare a submission for the Royal Commission on Nuclear Power and required to know how much electricity is used by the major industries, and by services such as water and sewerage. Only a little of this information was given, reluctantly, after two frustrating meetings with the same electricity department official.

Computer print-outs showing half-hourly records of power demand from 1958 on were then requested and a series of eight or nine appointments were made by the Campaign's researcher and cancelled later by the electricity department. Only after three months was the researcher able to have a discussion with two other department officials. A week or so after this some print-outs were provided.

In all, only a fraction of the information required was made available in time for this organisation to prepare its submission to the Royal Commission.

It appeared that only the General Manager of the N.Z. Electricity Department could authorise the release of information to the public at that time. The Campaign for Non Nuclear Futures argues that with earlier and easier access to all the quantitative information they needed, their submission would have led to a better dialogue between the parties concerned and raised more helpful questions in the minds of the Commission members. They further comment that it is important for raw information to be available to the public to interpret for themselves. Data can often be interpreted in more than one way and there is a danger that the public could be misled by a particular government department's interpretation of the data.

Questions Raised

1. Which is the greater risk?
 - a) The potential of a Government Department to mislead the public by releasing its own interpretation of data rather than the data itself, or

- b) The misinterpretation of data by the media or by lay members of the public.

2. Which situation could be corrected most easily?

SECRECY IN THE FOREST SERVICE

The Scientific Co-ordinating Committee for Beech Forest Research was set up as an independent committee. However it is serviced by the Forest Service and both Chairman and Secretary are Forest Service officials. Although all reports are marked "Confidential", copies of minutes and reports have been leaked to conservation groups. On one occasion the Minister of Forests was embarrassed when conservation groups made extracts from these public. The result was that questions were asked in the House re access to the minutes of the above committee. After this, Forest Service officials requested that the SIS be called in to trace the leak. The Minister turned down this request but asked the State Services Commission to conduct an enquiry.

Why Do Conservation Groups Want Better Access To Information

- a) It is common-sense for scientific information about publicly owned forests to be made public.
- b) If information is not available to conservation groups there cannot be a reasonable dialogue between the interested members of the public, the Government and Public Service. Forest Service use the argument of "lack of sufficient information" against the conservation groups.
- c) In a country this size, the public do not always have the resources to duplicate government work. The Forest Service cannot have it both ways.
- d) With information readily available the public can affect Government decisions if it feels strongly. If it is not available, the public is powerless and does not even know when to voice an opinion or on what to voice an opinion.

For example, the Wildlife Department of Internal Affairs recommended to the Forest Service that two areas of the Pureora State Forest (West of Taupo) be wildlife reserves. The recommendation was kept secret and not acted upon. The Result was that one of these areas has

already been totally destroyed - clear felled and burnt. If the public had known, an informed dialogue might have resulted and the end result could have been different. At least there would have been less bad feeling concerning the issue.

This history was related to us in May 1977. Since then environmental groups have made determined efforts to improve the flow of environmental information between government and the public.

See Environmental Council - Report of the Working Party on the Environmental Movement - April, 1978.

SECRECY IN THE DEVELOPMENT OF THE HEALTH DEPARTMENT COMPUTER SYSTEM

In 1974, the Health Department decided to reorganise and upgrade electronic data processing in the Health and Hospital services. They therefore invited a selected group of consultants, known only to them, to state whether they would like to receive an invitation to tender for a feasibility study, and if so, to submit qualifications. While this is not an unknown procedure, it is nevertheless open to objection in the public sector where public money is involved, and where it is necessary for it to be seen that all potential tenderers have equal opportunity. Undoubtedly the correct procedure is to advertise for those interested to register their qualifications, and then to draw up a short list, of those to whom an invitation is to be issued, based on the responses received. It may be that the question of improper procedures raised at the time have borne fruit, for it is interesting to note that in subsequent tenders advertisements along those lines have been issued.

The chosen consultants carried out the feasibility study but the recommendations in their report were not made public. This report was adopted by Government and the same firm of consultants was given a new contract to implement the recommended system without any opportunity for other firms to bid. In effect the overseas consultants who did the feasibility study worth some \$125,000 were handed on a plate a contract for about \$3,000,000. While it has been argued that there is a precedent for such a step, it usually applies only where the undertaking is of a highly specialised nature or there is extreme urgency. Neither of these considerations applied in this case. Further, when computers and other costs are included, the total cost of this job will be around \$30,000,000. It is therefore most important that the procedures followed are open and widely accepted by the public, potential contractors and other interested parties.

Not only was information kept from the public, and authorities outside the health department, but a rigid security clamp was imposed within the Health Department itself. At the change of Government in 1975 the new Minister of Health's own comments on this were that it was "an object lesson on how not to conduct the affairs of Government on behalf of the people". If this

statement gave hope to some that henceforth there would be an improvement in the flow of information they were soon to be disappointed.

It is true that the Minister, under some pressure did set up a Special Advisory Committee which received submissions and met in private. The Committee's report made some reference to lack of consultation but the subject was not explored.

"The Consultant's intention that, after clearance from the Government, the draft recommendations be discussed with users, was unfortunately not achieved."

and

"The Department made no apparent attempt to produce an abridged version of the Touche Ross Report in language comprehensible to the layman. The Report itself was given a restricted circulation to Hospital Boards at the administrative level, but in many instances the elected members of Boards were not informed of what was proposed".

The limited value of this Committee's report is revealed by the following paragraph.

"It should be pointed out that the Committee faced a situation in which it was required to report on developments underway and to which the Government was in a large measure committed. The Committee was also aware of the fact that differences of political opinion had arisen over the entire project, and that such differences may not have been fully resolved. A further factor of relevance was the request that the Committee report its findings by 30th June, or six weeks from the commencement of its deliberations."

Little factual evidence was included in the Committee's report to support its generally reassuring tone. It is also worth noting that while the six public servants on the Steering Committee which advised Government were interviewed and given the opportunity of explaining their actions, not one of the 60 or so members of the public who made written submissions was given a similar opportunity.

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The evidence of events shows that the reassurances of the Advisory Committee were misplaced. The progress of the project was referred to in the Auditor General's report 1975/76 (second report), in which the target dates for the various parts of the new system are mentioned. The 1977 report devoted two pages of description to the topic without comment, praise or criticism but stated "Although substantial progress has been made since the 1976 report, it has not been at the rate originally anticipated in the schedule set out in the agreement between the Department and the Consultants." In fact implementation dates were well over a year behind schedule and it would be most surprising if budgets have not been significantly overspent in consequence. No mention of this project was made in the Auditor General's 1978 report, yet problems persist.

In an excellent series of articles in the National Business Review, June and July 1978, Amy Brown traces the history of this project from the early euphoria to the mounting criticism and its dismal current status.

Questions Raised

1. Why was the advice of the overseas computer consultants not open to the full scrutiny of hospital boards and other user groups?
2. Is secrecy surrounding the spending of such a large amount of public money (much of it in overseas exchange) a good thing?
3. How can government ministers and public servants be held accountable for their actions when secrecy surrounds their decisions?
4. Should regulations governing the letting of government contracts provide for information to be released publicly before a final commitment is made?

SECRECY SURROUNDING THE SELECTION OF A FILM CENSOR

A citizen had been unable to find out who selected the Film Censor and on what criteria. Although the State Services Commission was responsible for the appointment, it is not SSC policy to reveal the membership of a particular selection committee. The person concerned was particularly interested to know how and by whom the Censor was chosen and on what criteria - for he has the final choice on what films will be shown and is the only one to speak for the public good.

When a film is banned, the interests wishing to profit from the showing of that film have a second chance in that banned or cut films can be referred, at their request, to the Film Review Board which may or may not uphold the Censor's decision.

On the other hand concerned organisations or individuals have no access to the Review Board on any film passed by the Censor. The Review Board functions only for importers of films.

Questions Raised

1. Do you think that the public should know the criteria on which our film censors are selected?
2. Do you think that the names of those on the selection committee should be made public?
3. If the information requested was readily available, would you be more or less concerned that access to the Film Review Board can only be obtained by the importers of films and not by the public?
4. Who is the best judge of the public interest? Government Officials? Concerned organisations or individuals? Is there a simple answer to this question?

SECRECY SURROUNDING THE SALE AND SUBDIVISION OF RESERVE LAND

Residents of Karori, a Wellington suburb, were surprised when land which had been "passive reserve" was sold to a developer for subdivision.

The developer made a water rights application and objections to this were lodged by Action for the Environment and other local groups. The grounds of their objection were that the stormwater and sewerage facilities of the area could not cope with an increased load and there was no plan to provide additional facilities in the foreseeable future.

Not only were local residents concerned about the likely results of overloading the stormwater and sewerage facilities of their area, but they were also concerned about the secrecy surrounding the sale of reserve land. They were unsuccessful in their attempts to find out from the Wellington City Council how reserve land could have been approved for sale. The relevant files were not made available to them as the council regarded them as confidential.

During the water rights application hearing the consultant for the developer cited a geological drilling survey, done by the Ministry of Works in 1958, as indicating that the area was geologically stable. Action for the Environment traced this survey to the Housing Corporation where it was released to them in error by a junior clerk. This file was not available to the public yet its contents indicated that the drilling survey in question was not done for geological reasons but was to assess the economics of earthworks. The drill used was unsuitable for a geological stability survey.

As a result of their difficulties in obtaining information the group approached the Ombudsman in February 1977. He agreed to investigate but has not yet been able to complete work on the case and report back.

Questions Raised

Does this case suggest that the individual and voluntary groups are at a disadvantage - information wise - when it comes to preparing a case against the actions of a local body?

THE BANK OF NEW ZEALAND WIND TUNNEL REPORT

In late December 1972 the Bank of New Zealand applied to the Wellington City Council for permission to build on their site at the corner of Willis Street and Lambton Quay. The building proposed was higher than that usually allowed but the BNZ assured the Council that they had had some wind tunnel tests carried out and that the results were not of great significance. They did not make the report of the tests available to the Council which accepted their assurances that all was well.

A small group of people, later to become organised as the Alternative Planning Team, were generally concerned about the effect of high rise buildings. They went to see the City Council and representatives of the Bank in February and March 1973. In spite of their efforts the BNZ still would not divulge the results of the wind tunnel tests, on the grounds that this was private bank information.

During 1973, information was leaked to the group indicating that the wind tunnel report was not satisfactory. Shortly after this the topic was raised at a public meeting of the Urban Development Association. The meeting took the form of a debate on high rise buildings and a representative of the architects for the BNZ building was one of the speakers. In spite of pressure brought to bear at this meeting this speaker still refused to agree to the wind tunnel report being made public.

In early 1975, the DSIR carried out some wind tunnel tests for the Post-Office which was proposing to put up a 16 storey building in Willis Street. The report of these tests became available through public libraries. It stated in effect that although the proposed new post office building would not lead to any wind problems, the BNZ building would. High winds which could occur on average about 50 days per year would result in gusts at street level around the BNZ building which were strong enough to blow people over.

This report was publicised and the result was that the city council commissioned an Australian expert to carry out tests on its behalf. The results of these tests were in substantial agreement with those of the DSIR, but in addition some positive suggestions were made which could reduce the problem. For example, wind shelters could be provided and also verandahs.

Shortly after this the Council reviewed its ordinances to require wind tunnel tests of large-scale buildings to be made, and their results to be available to the Council before planning permission could be given for them. The Alternative Planning team considered that it had achieved one of its objectives.

The same group believes that the wind tunnel report was only one aspect of the secrecy surrounding the bank's original dispensation to build. A case, brought by the group, against the BNZ and the City Council on the validity of this dispensation will be heard in the Supreme Court on November 13th, 1978.

Questions Raised

1. Would this case history have been written if the BNZ had openly discussed its wind tunnel report with the city council and interested community groups?
2. Is there an implied assumption in the actions of the BNZ and the city council that cooperating with community groups by giving them information is likely to create difficulties rather than produce solutions to problems which are acceptable to all?
3. Is a well-educated and articulate population the best defense against excessive secrecy and authoritarianism?

SECRECY SURROUNDING THE PETITION TO REPEAL THE CONTRACEPTION, STERILISATION
AND ABORTION ACT 1977 AND THE CRIMES AMENDMENT ACT

It was anticipated, because of the public interest the "Repeal" campaign had aroused, that the Petitions Committee would take oral submissions and deliberate in public with the media present as is the usual practice at the majority of select committee hearings.

The Chief Petitioners learned via a national press release, that only written submissions would be accepted, all deliberations would be in private and that submissions would only be accepted from "Repeal", the Department of Justice and the Society for the Protection of the Unborn Child. A week later the petitioners were notified officially of the procedure to be adopted by the Committee.

"Repeal" found the handling of the petition unacceptable and arranged a meeting with Mr Friedlander (the Chairman of the Petitions Committee) to express this dissent. "Repeal" argued that:

- 1) Deliberations should be in public because of the huge public response and interest generated by the petition.
- 2) The media should be present to inform people all over the country of these deliberations as the petition had received national coverage.
- 3) The Society for the Protection of the Unborn Child should not have been invited to present submissions if no other interested group were to be given the opportunity. Furthermore it aligned "Repeal"s objective with the abortion issue when "Repeal"s objective had been the repeal of undemocratic, oppressive and demonstrably bad law. Associating "Repeal" in such a way showed a misunderstanding of "Repeal"s objective.

Mr Freidlander in reply contended that nothing would be achieved by having public hearings and that in such a controversial matter it was preferable to deliberate in private. As precedent, he quoted that the select committee hearing on the Rock Lobster Regulations had been heard in a similar procedure. S.P.U.C. had been invited to present submissions because it was known to be an opponent of the petition and was necessary to balance the argument.

In a letter to Mr Friedlander, "Repeal" stated that it did not accept any of these arguments. Letters and telegrams expressing similar criticisms flooded the Petitions Committee, but "Repeal" was not successful in its attempt to change the procedure by which the petition could be heard. No appeal is afforded the public from a decision of the Chairman of a Select Committee.

The Regional co-ordinators of "Repeal" unanimously agreed that the signatories to the petition had a right to hear the arguments that the chief petitioners were to present on their behalf to the Committee. It was intended to release the submissions the day before the written submissions were to be presented to the Committee. Repeal was informed however that it would be a breach of Parliamentary Privilege because once a matter was before a Parliamentary Committee for deliberation in private it became privileged information until reported back to the house. "Repeal" was prepared to place itself in breach because of the importance of informing the public. However the media would also have been in breach had it released the submissions and this the media could not do.

On the day the written submissions were presented S.P.U.C. released the findings of the McNair Survey that it had especially commissioned as an attempt to invalidate the petition. As this Survey formed an integral part of the S.P.U.C. submission "Repeal" believed that a breach of privilege had occurred and made a complaint to Mr Friedlander.

Mr Friedlander considered the matter and decided privilege had not been breached because the McNair Survey was a public document and the Survey was extraneous to their submission. "Repeal" rejected such a conclusion because:

- 1) The McNair Survey was headed "PRIVATE AND CONFIDENTIAL".
- 2) The public did not have access to the Survey. When "Repeal" itself attempted to buy a copy it was unable to do so.
- 3) McNair's Survey N.Z. Ltd had itself stated that the reason the survey had been commissioned was in order to form part of S.P.U.C.'s submission to the Petitions Committee.

Correspondence between "Repeal" and Mr Friedlander over this matter continues but again "Repeal" is unable to take the matter further as it has no means of redress from Mr Friedlander's decision.

Due, we believe to the criticism that ensued about the procedure the Committee had adopted, "Repeal" was invited to appear before the Petitions Committee. Three petitioners were able to attend and it soon became apparent that the meeting was a perfunctory gesture on the part of the Committee. From the questions asked it seemed that the evidence and arguments "Repeal" had submitted had been misunderstood, misinterpreted or not read at all. Mr Dale Jones, who replaced Mr Falloon for this one meeting, emphasised the point that, as a substitute member, he would not be taking part in the Committee's deliberations or recommendations. Nevertheless, he completely dominated the meeting (The transcript shows that out of 24 pages of questions and answers asked by 6 of the members - Mr Lambert asked no questions while Mr Jones contribution occupied ten pages).

In the circumstances, the finding of only a fair recommendation by the Petitions Committee came as no surprise to the petitioners.

Questions Raised

- 1) The petitioners, representing 325,000 people, did not object to public hearings of the petitions committee, yet they did not have the right of appeal against the decisions of the committee to deliberate in private. Do you agree with this?

- 2) What are the dangers inherent in this degree of privacy being accorded to the parliamentarians?
- 3) Should the circumstances in which committees can hold private hearings be limited?
- 4) What would be the result if all "controversial matters" were heard in private?
- 5) Does this case history suggest that other decisions of the petitions committee could be subject to appeal also? Which ones?

The following two examples illustrate further aspects of information flow in the community.

THE OPERATION OF THE RENT APPEAL ACT

Grant Allen, in his "Perspectives on the operation of the Rent Appeal Act 1973", set out to establish what success the Act had had in bringing about the legislative redistribution, (by means of state interference) of rights, privileges, powers and immunities to a hitherto relatively disadvantaged group, namely tenants.

He found that fewer than half the tenants interviewed showed that they knew of their improved legislative position under the new Act. Even fewer had sufficient knowledge to be able to invoke the assistance of the Labour Department and the Rent Appeal Boards set up by the Act. Those tenants who had heard of the Rent Appeal Boards did not appear to be contemplating using them in the event of a rise in rents.

The poor knowledge of the provisions of an Act intended to benefit them reflected the lack of successful publicity given it. A brochure explaining the provisions of the Act was criticised by a number of tenants' organisations for inadequacies of content and distribution.

Even those who did know about the Act did not intend to use it. This was probably associated with the few reports there were of successful prosecutions - four newspapers reports of court actions in the second year of the Act's operation. This in turn reflected on the lack of vigour and expedition with which the Act was enforced rather than a failure on the part of the press to report such court actions.

Grant Allen concluded from his research that the Rent Appeal Act had not led to the results hoped for. He considered that better information should be given to tenants, landlords and their agents. Provision should be made to give the Department and Boards the statutory duty of informing these parties of their rights. Like Galanter he found that rule changes "do not penetrate automatically and costlessly to the system".

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Grant Allen, "Perspectives on the Operation of the Rent Appeal Act 1973", Victoria University of Wellington Law Review 1977.

Galanter, "Why the haves come out ahead: speculations on the limitations of legal change". (1974) Law and Society Review, 95 p149.

Questions Raised

1. Can you think of a practical way of informing all tenants and landlords of their rights and responsibilities under the new Act?
2. How far should government be held responsible for informing people of their rights and of any special services available to them?
3. How can the "system" be made more "approachable" by ordinary people?

INFORMATION AND IDEAS FROM OVERSEAS

Recently, there has been a debate within government and among members of the public on the question of allowing visitors to New Zealand to speak in public about how they view the political situation in their own countries.

The planned visit of Mr Jose Ramos Horta, the leader of the East Timor Fretelin movement, now in exile, sparked off this debate. It was further fuelled by the government's decision that certain students from South Africa could come here only if they agreed to refrain from "political activities" while in this country.

Questions Raised

1. Should freedom of information and open government extend to fostering a free flow of information and ideas from overseas countries and to overseas countries?
2. Are there limits to this, for example, in the interests of national security or the public interest either here or in other countries?
3. Do you have confidence in the government's ability to judge what is in the public interest or in the interests of national security. If not can you suggest any reforms that would result in an increase in your confidence?

THE PRESENT LEGAL POSITION AND SOME COMMENTS ON POSSIBLE REFORM

Official Secrets Act 1951 and consideration for reform, including right to information legislation.

Supplementary legislative provisions inhibiting freedom of information.

Legislation giving a positive duty to disseminate information.

Information on persons and corporations.

Conventional Law.

Parliamentary Law.

Common Law and Crown Privilege.

Defamation Law.

Ombudsmen.

Conclusion.

There is presently no general right vested in the public giving them access to information held by the Government. To many, this appears to conflict with the basic concept of a democracy where the control of power must be and be seen to be with the people. Those who oppose the introduction of such a right point to the severe practical difficulties of legislating for such access while still leaving the Government with the ability to conduct business with a degree of confidentiality on the one hand and satisfying the desire of the public to be informed on the other.

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OFFICIAL SECRETS ACT, 1951, AND CONSIDERATION FOR REFORM

The main legislative bulwark which inhibits the free dissemination of information is the Official Secrets Act 1951 and in particular, s.6. This has been variously described as "out-worn", "dangerous" and "thoroughly more indecent than Down Under the Plum Tree". The section undoubtedly suffers from its inclusion in an Act which is mainly devoted to, and accordingly related in the public's mind with, espionage. The present Act came into force in New Zealand on 6 December 1951 and replaced the Official Secrets Act 1911 (UK) which was until then in force in New Zealand. Section 6 is in effect a direct re-enactment of s.2 of the United Kingdom with minor changes which are inconsequential in this context.

Because it is so important it is worth repeating in full. It reads as follows:

"6. Wrongful communication of information - (1) If any person, having in his possession or control any secret official code word or password, whether of New Zealand or of any other country, or any sketch, plan, model, article, note, document, or information which relates to or is used in a prohibited place or anything in a prohibited place, or which has been made or obtained in contravention of this Act, or which has been entrusted in confidence to him by any person holding office under His Majesty or under the Government of any other country, or which he has obtained or to which he has had access owing to his position as a person who holds or has held such an office, or as a person who holds or has held a contract made on behalf of His Majesty or on behalf of the Government of any other country, or a contract the performance of which in whole or in part is carried out in a prohibited place, or as a person who is or has been employed under a person who holds or has held such an office or contract -

- a) Communicates the code word, password, sketch, plan, model, article, note, document, or information to any person other than a person to whom he is authorised to communicate it or a person to whom it is in the interest of the State his duty to communicate it; or
- b) Uses the information in his possession in any manner, or for any purpose, prejudicial to the safety or interests of the State; or

- c) Retains the sketch, plan, model, article, note, or document in his possession or control when he has no right to retain it or when it is contrary to his duty to retain it, or fails to comply with any directions issued by lawful authority with regard to the return or disposal thereof; or
- d) Fails to take reasonable care of, or so conducts himself as to endanger the safety of, the sketch, plan, model, article, note, document, secret official code word or password, or information -

he commits an offence against this Act.

(2) If any person, having in his possession or control any sketch, plan, model, article, note, document, or information which relates to munitions of war, whether of New Zealand or of any other country, communicates it, directly or indirectly, to any person in any manner, or for any purpose, prejudicial to the safety or interests of the State, he commits an offence against this Act.

(3) If any person receives any secret official code word or password, or any sketch, plan, model, article, note, document, or information knowing or having reasonable ground to believe, at the time when he receives it, that the code word, password, sketch, plan, model, article, note, document or information is communicated to him in contravention of this Act, he shall be guilty of an offence against this Act, unless he proves that the communication to him of the code word, password, sketch, plan, model, article, note, document, or information was contrary to his desire."

The penalty under the Act is a fine of \$1,000, or 15 years imprisonment, or both. "Office under His Majesty" is defined as meaning any office or employment under the Government of New Zealand.

The provision has its early background in 19th Century English Government concern at unauthorised disclosure of official information. Information in the hands of civil servants was considered the property of the Government, disclosure being regarded as a grave breach of trust. It should be remembered that at this stage of British Parliamentary history Government was considerably less involved in direct controls and a Minister was expected to resign if his administrative control was found wanting. The

civil servant was very much the impartial servant to the Minister for the time being. Today the close relationship necessary between a Minister and his officials and the frankness which ought to exist between Ministers themselves and officials themselves is very often referred to in discussions on freedom of information. Whilst the need for such candor cannot be denied, it can be argued however that it need not necessarily prevent an increasing openness in such relations.

It is undoubtedly an extremely wide provision. There is no distinction of kind or of degree. Everything which comes into the hands of a civil servant or anyone else who receives Government information is covered by the provisions of the section. There is therefore potential for the Act to be used for protecting the political interest of the Government of the day.

Under the Section an offence occurs when information is disclosed without authority or to a person other than one to whom it is in the interests of the State to communicate it. The ultimate effect of this is to place the disclosure at the discretion of the Minister. To some extent authority is probably assumed by departmental heads but would not reach far below that level. Furthermore, it is difficult to discern any real evidence of practices generally adopted. For example, there seems to be no general practice of disclosing, even after the event, the material or information upon which a decision is based.

That the section covers an unlimited range of information without distinction has been the cause of much criticism. The trivia which Civil Servants tell friends and family may well be covered and it is the prerequisite of the Attorney-General's consent which is designed to ensure that minor and technical offences never reach the Courts. It is, however, the very comprehensive nature of the provisions which appear to have prevented any regular policy being framed for enforcing them.

The Act is reinforced by the Public Service Regulations 1964 and in particular, Regulations 42 and 43. These provide:

- a) That Civil Servants shall make a declaration drawing their attention to the Official Secrets Act at the time they take up their appointment.
- b) That a Civil Servant shall not use information gained in his employment for any purpose other than his official duties.
- c) That a Civil Servant shall not give or otherwise use any information out of the strict course of his official duty without the express permission or direction of the Minister.
- d) Communications to the press shall only be made by a Civil Servant authorised to do so.
- e) No Civil Servant is to take copies of documents for any purpose other than in connection with his duties.

These provisions, too, appear as absolute as the statute but the penalties including caution, reprimand, transfer, demotion, dismissal and fine show ample choice to fit the circumstances. There is scope of course to interpret the course of official duty widely so that in certain circumstances the disclosure of information will be within the provisions. Such an approach would support the view that there is a concept of implied authorisation throughout the civil service but as alluded to earlier there has been no research on just what are the practices in the various departments. Therefore, whilst the senior official undoubtedly has greater freedom of action than his Nineteenth Century counterpart, the real policy and extent of this is very difficult to determine.

At this stage it is pertinent to reflect that in any decision-making process the timing of information becoming available may be quite crucial. If it is made available too early and before it is complete it can cause unwarranted reaction and if it is too late it may be difficult to undo what has already been done. At least that is without effort out of all proportion, and in some cases loss to a section of the public may have occurred. This can be illustrated by a moment's reflection upon an

unauthorised disclosure in recent years here in New Zealand. After Government had decided upon the new designs for New Zealand decimal coinage but before this was announced to the public, the decision was disclosed without authority. The resulting uproar of public opinion led eventually to the alternative designs being made known - the public being invited to "vote" on their favourite in order to stem the steady stream of criticism. Ultimately a set of designs was chosen, in which only one of those originally decided upon by Government remained.

Returning to the Section itself - there would appear to be three options open in any deliberation on reform:

- a) Retain the present section with its comprehensive provisions.
- b) Repeal it altogether.
- c) Repeal it but replace it with less comprehensive cover.

Against these three alternatives there must be placed the option of legislating a positive right for the public to be given information.

If one adopts option (a) it is almost totally incompatible with any concept of a right to be informed. The arguments for retention and against the right to information legislation hinge largely on the difficulty of defining those sections of official information which require some form of protection. It is argued that it is impractical to make such definitions and the width of the section ensures that it protects that information which from time to time may require the sanction of the criminal law to ensure its security. The responsibility for disclosure is left ultimately with the Minister who is responsible through Parliament for his actions. The ultimate discretion exercised by the Attorney-General on whether or not a prosecution will proceed is then pointed to as justifying the width of the provision and to ensure it is used only for serious breaches and is therefore unlikely to be used for political reasons.

if one adopts option (b) and decides on complete repeal, any parallel right to information legislation must, to be logical, be wide and general and this will in effect place reliance on voluntary restraint. It can then be argued that the rest of the Act (and in particular s.1) protects the national interests and this is all that is required. A careful study however will reveal that there is no cover against the leaking of information which falls short of espionage.

The school of thought reflected in option (c) considers that some criminal sanction is required to protect certain official information from being revealed in a manner or at a time which would prejudice the interests of the Government. One is immediately faced with the task of deciding just what should come within the sanction and what outside it. Having made that decision it is then possible to parallel this with legislation which gives an absolute right to the public, to have revealed to it, information outside the classification. It is round the problem of defining these categories that much freedom of information legislation discussion takes place. No attempt will be made here to define these. This has been (e.g. Franks Committee Cmnd. 5104 para. 278ff and McMillan N.Z.L.J., 1977, 248ff) and will be in the coming months very fully deliberated.

Sweden and the USA have tried to tackle this problem. The USA experience is pertinent. The relevant sections of the original Act in 1966 occupied some two and one half pages. The 1974 amendment occupied some twenty-four pages and the litigation literally runs to many volumes. Cost is a real factor to be weighed as well as the administrative system necessary to ensure the efficiency of any legislation. We must also keep in perspective the size of the country we are considering. Even after the definitions have been made there are the inevitable borderline cases as witnessed by the USA experience, and whether these are subject to review by the Courts, by an independent review authority or are left to the discretion of a Minister is another decision which must be made.

Amongst such detail of what is to be left as subject to sanction is the all-important question of timing referred to earlier. Whilst it is easy to criticise as futile the publication of information after a decision

is made, this may be argued to be in many cases the only practical way of allowing Government to get on with the job. A decision can be changed so long as too much action on it can be held. One might properly ask however - at what cost? Clearly, the ability of Government to act decisively cannot be unduly fettered by obligations to enter into public debate at every turn, and it may be unwise to have every speculative departmental thought or embryonic plan open for scrutiny.

The tendency is, to consider it appropriate, if one is to follow the course of reform to remove s.6 altogether and combine the basic right to information and the sanction on the release of certain categories of information in one comprehensive enactment. It is, of course, possible to opt for the reformed s.6 alone. The real effect of a narrower s.6 would be for Government to have to accept an obligation to publish more information voluntarily. It must be remembered that Open Government is not prevented by s.6 although its wide provisions do inhibit it. S.6 is only concerned with unauthorised disclosure. In deciding whether to legislate a basic right to be informed it must be considered whether it is desirable to change completely the basic nature of Government's present obligations. It must be reflected on too whether such a statutory duty is necessary in a system where Ministers are still able to be questioned in, and are answerable to, Parliament. A compromise may lie in separate pieces of legislation, each embodying a right to specific information. Those for example involved in the provision of health care could be given access to designated information as of right under certain administrative systems. This may well ensure that those who ought to know or who can benefit themselves and the public generally by knowing will be informed. This may assist to solve the timing problem referred to earlier and, as well, hold costs within reasonable limits.

Whichever option is taken it seems clear that we would be embarking along a path of necessary but delicate reform and it behoves us to think very carefully on the balance which must be struck between the democratic need for openness and the requirement that some matters must inevitably be kept secret from the public (at least for a period of time).

SUPPLEMENTARY LEGISLATIVE PROVISIONS INHIBITING FREEDOM OF INFORMATION

Many other legislative provisions tend to flow from or reinforce that set out in s.6 Official Secrets Act and some of these can be mentioned briefly

- a) Under the Oaths and Declarations Act 1957 provision is made for an oath of secrecy to be taken by members of the Executive Council.
- b) Under the Archives Act 1957 public records over 25 years old and which are no longer in current use are required to be deposited with the Chief Archivist. This however may be prevented or subject to any limitations which the Minister of Internal Affairs may desire to impose on the grounds of public policy.
- c) S.78 Crimes Act 1961 which made it an offence to communicate certain types of information with intent to prejudice the safety, security or defence of New Zealand. To some extent consequential amendments to these provisions may be necessary following reform of the Official Secrets Act itself.

LEGISLATION GIVING A POSITIVE DUTY TO DISSEMINATE INFORMATION

There are other legislative provisions which should be mentioned and are sometimes pointed to as demonstrating an obligation to inform the public.

- a) The first is provisions such as those under which the Department of Scientific and Industrial Research is required to make information available to the public. Under s.5(d) Scientific and Industrial Research Act 1974, the Department has been charged:

"To collect and disseminate scientific and technological information including the publication of scientific reports."

Whilst it is not suggested that the Department does not carry out this function as it is required to, there are in fact a number of formal and informal restraints on scientists making information freely available to the public. There is, of course, as well, the Official Secrets Act and the Public Service Regulations and the restraints

which they impose. There are other related issues especially those which attach to a professional relationship such as client confidentiality which it is not appropriate to go into at this stage and which create further inhibitions on departmental officers - this serves to illustrate the need to carefully coordinate reform in both the area of official secrecy and the right of the public to request Departments to give information. The point is that it is of limited help to have fine-sounding provisions if their effect is nullified by restrictions in other areas.

- b) The second provision which gives a certain obligation to inform is in relation to those bodies which come within the Public Bodies Meetings Act 1962. These include local councils, Education Boards, Hospital and Harbour Boards and similar institutions. All meetings of such bodies are open to the public unless a resolution is passed excluding them on the grounds that publishing would be prejudicial to the public interest or cause personal embarrassment. The public can request copies of the agenda together with such reports as may be attached to it and they may also receive copies of minutes.

In other respects officers of a local authority owe the same duty of confidentiality as do other citizens to an employer. There is no parallel to the Official Secrets Act applying to local Government and apart from what information is obtained through such meetings there is no right vested in the public to obtain information.

In respect of ratepayers, for example, there is the right to obtain information on and inspect the accounts of the Treasurer under the provisions of s.144, Municipal Corporations Act 1954 but those rights devolve from the nature of the relationship between the Municipal body and its funders.

INFORMATION ON PERSONS AND CORPORATIONS

There remains another area to be dealt with briefly at this stage if only for the reason of demonstrating its inter-relationships with, but distinctness from, the question of freedom or right to information. This is the

plethora of statutory provisions which prohibit the disclosure by Government of information acquired from the public under a statutory power.

It is inappropriate to illustrate these in detail here. One example is the Statistics Act 1975 which contains in particular at ss.37 and 28 detailed provisions to ensure the confidentiality and security of information obtained under the provisions of the Act.

There are also the legislative controls surrounding the dissemination of information from the Wanganui Computer Centre and the right of the individual to have recourse to the Privacy Commissioner in certain cases.

In many cases these provisions apply to civil servants and to that extent duplicate the provisions of s.6 Official Secrets Act. However, they differ from s.6 in that they are specific and are not "catch all".

Because they are in response to a compulsion exerted on the public they are essential and that any right or freedom given to the public excludes any right to obtain information on fellow citizens held by Government under whatever power.

An important distinction must be emphasised here and that is the difference between information given to the Government and confidential matter acquired by it, e.g., through police, trade and industry or immigration authorities. The ability of the Government has increased markedly in acquiring private information which may not necessarily be as a result of a statutory power to do so. It may, therefore, be suggested that there is room in any reform for a protective provision in respect of all information held by the Government on individuals, corporations or other bodies. This would wrap up and extend what is partially covered by the legislative provisions earlier referred to.

CONVENTIONAL LAW

Much British constitutional law is enshrined in conventions and among the oldest is the secrecy of Cabinet deliberations. Nothing may be published contemporaneously which reveals to the public the proceedings of Cabinet. Even the Ombudsman, whose powers will be referred to briefly later, is excluded from obtaining copies of Cabinet papers by the Statute which creates his office. Lord Widgery, in the Crossman Diaries case, gave support to this convention in leaving it open for the courts in the future to restrain publication when it appears necessary in the public interest to do so.

The Official Secrets Act of course covers Cabinet documents but in considering reform of that Act this constitutional convention will need to be examined and considered.

PARLIAMENTARY LAW

The mere participation in the law-making process by appearing before a Select Committee, can bring a citizen within Standing Order 366 of the House of Representatives. The submissions made are strictly confidential and should not be published or divulged until the Committee reports back to the House. Any person who offends against this provision commits a breach of privilege. However, it is possible for a particular hearing or part of it to be open to the public and it is encouraging that this is occurring more frequently.

COMMON LAW AND CROWN PRIVILEGE

Under the Common Law doctrine of Crown Privilege, the Crown can resist the disclosure of information during litigation. While the Courts however are now tending to insist on disclosure and to look more carefully at claims that disclosure will inhibit freedom of discussion within the Government system, this still remains a hurdle to be overcome by any would-be litigant.

DEFAMATION LAW

The Official Secrets Act has been said to be "the greatest single statutory restraint on a free press in New Zealand" - (Hodge, Recent Law, Vol.4 No.7 p. 284). The other is undoubtedly contained in the laws of defamation and they are worth a mention in passing here. Until the statutory defences of fair comment and unintentional defamation are made more certain by legislation, newspapers will have to continue to assess their position in any case, against an extremely complex and often unworkable law. This is highly undesirable and it is only to be hoped that some of the recommendations of the Committee, which reported to the Minister in December last, will be brought into legislation very soon.

The concept of a new statutory defence, which will give a newspaper the protection of qualified privilege in certain circumstances, while complicated in its concept, has a great attraction.

If there are moves made which utilise the right to information then it is important for the reforms in this field to take place as a parallel advance.

OMBUDSMEN

The final factor I would mention to be fitted into this legal framework is the Ombudsmen. Their very investigative procedure of necessity requires freedom to acquire information, be it from Government or Local Authority. The fetters on them relate to the Cabinet, mentioned earlier, or information which the Attorney-General certifies might prejudice security, defence or international relations or the investigation or detection of offences. They too, are subject to the Official Secrets Act but may disclose matters which they ought to for the purposes of a particular investigation. In their recommendations they are able and do from time to time make suggestions which extend the participation of the public or the knowledge of the public.

CONCLUSION

Above all, however much change there is made to the Law, it is essential that those who must work within it do so willingly and have faith in it. So a change in law, however slight, will need to be accompanied by a parallel change in attitude.

NON-LEGAL BARRIERS TO THE FREE FLOW OF INFORMATION IN NEW ZEALAND

POSSIBILITIES FOR CHANGE

Are we making full use of current means of obtaining information within established legal limits? Are these legal barriers inconsistently interpreted? Have ambiguities arisen as a result of administrative convenience taking priority over consumer interests? Parliament, government departments, local bodies, statutory bodies, professional and other groups are equally catchment areas in the receiving of information and controlling agents in its flow. Some changes in attitudes and activities have been advocated.

In the absence of a formal constitution, how far have New Zealanders evolved the "right to know" within the legislative framework they have so far constructed? When these barriers are themselves challenged, statements are made that not enough advantage is taken of the opportunities now freely and legitimately available. In fact, the sheer volume of information is in itself an obstacle to the free flow of information. Self-questioning New Zealanders have even voiced the thought that as a people we have become unthinkingly passive, producing the kind of inertia which provides the most formidable barrier of all non-legal barriers to the free flow of information.

PARLIAMENT

Parliament, as the central institution in our democracy, is the receiving area for the major part of the information that is to form the basis for official decisions. The members are, refreshingly, still accessible to the electorate; their combined activities less so. The proceedings of the House, in our single chamber system, are broadcast within stated hours, with extensions rarely conceded. Important debates can take place outside these

hours. Despite recent technical improvements, Hansard, the official record of the New Zealand Parliamentary debates, takes time to emerge from the Government Printing Office. It is not, as commonly supposed, a verbatim report of all that takes place on the floor of the House, as the discussions of the House in Committee are not recorded, merely the result as reported back to the Speaker.

There is a Parliamentary Press Gallery, covering 11 different New Zealand newspapers, news agencies and radio and TV stations - 45 members in all in 1976. These journalists have to do their own difficult balancing act between reporting the statements of politicians in the House, at press conferences etc. and filling editorial demands on follow-up stories. The corps is not large enough to cover government departments adequately nor to spread over the whole select committee system, although many of these committees are now more open to them than in the past. Some, such as Foreign Affairs and Public Expenditure are not, although there have been recent discussions on opening up the latter important committee which is Parliament's "financial watchdog" on departmental spending. In 1977 the Committee itself called for proposals from government departments and the news media to help decide how much more could be disclosed.

SELECT COMMITTEES

The select committees operate upon those Bills referred to them by the House, or in some specially designated areas (e.g. Violent offending, Road safety etc.). The public may not necessarily know when select committees are dealing with particular bills, especially if the press has not reported this, and not all papers do this methodically. It has been suggested that a regular news sheet from the Committee Clerks' office could be produced and published in the daily press to provide this information. At the moment, it is left to lobby groups and other interested parties, or societies like Common Concern, to find out the dates and times of hearings and the deadline for submissions. If the latter are to be made - and the process is open to all - there are other hurdles such as the cost of producing the requisite number of copies, the decision whether or not to appear in person, if this opportunity arises, and the cost of doing so in terms of travel, accommodation and man-hours.

The select committees rarely move from the Capital. Therefore, unless a citizen is physically present in Wellington, he or she has little chance of direct access to their discussions. Even for those in Wellington, access depends on the agreement to hold such hearings and on sufficient seating in the committee room. What most people hear is what is reported back to Parliament by the Chairman of the Committee, usually followed by Opposition members of the Committee who highlight any areas of dissent. If the hearings are open, it is possible to have access to the submissions of other interested parties. Any leak of a committee's deliberations by a member or by anyone attending a closed hearing, before the Bill in question is reported back, incurs a breach of privilege complaint which brings referral to the Privileges Committee of the House. This small, high-powered committee comprises 3 members of the ruling party (one being Chairman) and 2 members of the Opposition party. There has been some agitation, most noticeably from the legal profession, for a restructuring of this committee to ensure a non-partisan approach. The appointment of a neutral chairman, for instance a Supreme Court Judge, has been advocated, and it has been suggested that with the next revision of the House Standing Orders, close attention should be paid to the constitution and procedures of the Committee.

BILLS NOT REFERRED TO SELECT COMMITTEES

A good many bills are not referred to a select committee. The general public may or may not have been prepared for their arrival on the Order paper. Much depends on the way the author of the Bill has prepared the ground for its introduction and acceptance. Within the House, the caucuses provided a forum, but caucus meetings and caucus committee meetings are not open. Although there may have been some limited awareness of impending legislation, the introduction of a Bill might often prove the first opportunity the public has of gaining any information on its *raison d'être* and background, as well as its actual contents. Often the Opposition is also in the dark and must play for time until its research team can swing into action.

In the House, many members are at a disadvantage, not only as Opposition MPs but as back benchers of the party in power, in not having access to the necessary documentation. Like any ordinary member of the public, the MP may be denied perusal of the report commissioned from the expert, the departmental staff manual, the departmental criteria for the operation of this policy or that. There is for him, or her, the device of the Parliamentary question for obtaining brief statistical or other information. But this has built-in limitations. The time given such sessions is one limitation, prior vetting by Questions Committees and Standing Orders are others.

There have recently been pleas from MPs for the earlier release of major reports on, for example energy goals and guidelines, or nuclear power. Some of these are released to the press and broadcasting under an embargo before they are released to the Opposition. The Professional Division of N.Z. Library Association has also approached Cabinet on this point, asking that at the same time as copies of key government decisions and reports are issued to the news media under embargo, a further copy under the same embargo be released to each of the public libraries participating in the Government Printer's depository scheme, with a copy also to the General Assembly Library.

REGULATIONS

New Zealand statutes have been liberally endowed with clauses enabling the making of regulations. While the statutes themselves have been the decision of the House, the details of their regulations have not been so debated. It is the Executive Council (i.e. the Governor-General or his representative and any 3 Cabinet Ministers) that issues regulations in the form of Orders in Council. These can be promulgated whether or not Parliament is in session. "The Regulations Amendment Act 1962 provides that all regulations be laid before parliament within 28 days after the date of making thereof if Parliament is then in session....."

While prior consultation with interested parties is often involved, there is no formal machinery laid down for the making of regulations. Notice is given in the Gazette of the title, price etc. of each regulation. If the

subject matter is newsworthy, the press may give it coverage. Copies of regulations may be obtained from Government Printing Office bookstores and may be studied at public libraries which hold Statutory Regulations. It would be fair to say that the average citizen would have little knowledge of the contents of the regulations output (337 in 1977) although they are binding on all citizens. There is not much redress, apart from some rights of appeal to the Courts or the use of Parliamentary procedures such as the Parliamentary question, a petition, or referral to the Statutes Revision Committee under the limited provisions of Standing Orders 361 and 362. Reforms suggested have included a decrease in the amount of regulations making and the setting up of a Select Committee to deal with regulations. This committee would operate in the same manner as other select committees, with the participation of the public, and would study proposed new regulations and regularly review existing regulations.

POSSIBILITIES FOR CHANGE

There has been some expression of opinion, both within and beyond Parliament for the reform of the system to allow for more open, participatory government. Greater freedom of information would be an essential element in such a goal. Without actual legislation, this might be tackled in a number of ways:-

- a) By a well-tried New Zealand method - the setting up of an independent Commission of inquiry (although among its recommendations might well be the passing of legislation).
- b) Cabinet might make a statement of general principles and issue guidelines, as has been tried overseas.
- c) Parliament might set up a bi- or multi-party select committee.
- d) Both caucuses might study the problem and report back.

In the case of (c) and (d) it is likely that there could be some consensus on the cutting down of the amount of legislation, decreasing its speed through the House and referring more of it to select committees for greater participatory consultation and concentrated reflection. There would undoubtedly be support for the simplifying of the language of bills, the wider

publicising of legislation, both before and after introduction into the House, by means of Green and White papers and accompanying explanatory material, and the opening up of the whole select committee system. In the handling of their own more complex jobs, MPs would no doubt welcome more research support and the consideration of alternates in their constituencies to share some of the educational and communication tasks.

GOVERNMENT DEPARTMENTS

Guidelines from Parliament could clearly have a liberating influence on the government departments. A Cabinet directive in 1964 gave senior public servants greater freedom to talk openly about the work of their departments. Perhaps this requires reaffirmation at the start of each new session, for the benefit not only of Parliament but of the bureaucracy. Habits of non-disclosure evolved over many years are not easily eliminated.

Hierarchical structures often result in the authority to release information being narrowly confined to top levels or special sections, for example the memo issued last year to Post Office staff instructing them not to speak to the news media but to refer all queries to the Post Office public relations division. There could be some flexibility here, with information being released at various levels - lower ranks being empowered to release only certain kinds of information. This implies some sort of classification system. It could be helpful if the department could supply an enquirer with a list of the type of material open for public perusal, and on what basis. This falls short of a comprehensive list indicating as well what the department designates as "classified" and not for public consumption. If some formula is devised for the latter, there should be scope for public servants to state their views openly on the classification of separate items or classes of material.

The citizen who has been rebuffed in his efforts to obtain material vital, in his eyes, to his own concerns, might have some success in an appeal to the Ombudsman who can approach either government department or local body for the release of information previously refused. However, the Ombudsman's office has restrictions on which complaints may be investigated, and on which material there is access to. The Ombudsman also is subject to the Official Secrets Act.

There is clearly no uniformity at present in the handling of requests for information, and much depends on the individual department and the attitudes of its Minister and senior officials. An interesting development and perhaps a hopeful precedent was the meeting earlier this year of national environmental groups with the heads of about 8 departments to discuss guidelines for the release of information.

Possibly public servants have been overcautious in the space they have put between themselves and the barriers of the Official Secrets Act, the State Services Act and the State Services Regulations. Some ground has been broken in the individual presentation of submissions before Royal Commissions and the publishing under individual authorship of commissioned departmental reports, with the prior knowledge of the Minister. For example the appearance as a private citizen of the former Secretary for Justice, Mr Gordon Orr, before the Royal Commission on Contraception, Sterilisation and Abortion, and the publication of Miss Patricia Webb's "Review of Matrimonial Law", commissioned by the Justice Department.

The departments could well be encouraged to review past policies and undertake a more active and deliberate pursuit of the means currently at their disposal for providing information to the public. The appointment of Information Officers, well briefed and trained, provides one such remedy. The Justice Department has made an appointment of this kind and has issued leaflets explaining in clear simple language recent legislation the department is responsible for, e.g. Small Claims Courts.

LIMITATIONS TO CHANGE

Given the will to introduce some reforms, there must nevertheless be some recognition of the need for privacy in some aspects of the role of the public servant. There are situations throughout the whole decision making process from the earliest thought germination to the formulation of definite workable policies and alternatives in which he or she might find the concept of freedom of information inhibiting to a frank and free ranging exchange of ideas. Some flexibility could be at risk and the temptation not to record could arise if not enough confidentiality was assured.

Barriers of a more prosaic nature are economic, involving increased staffing and plant to retrieve or reproduce material. The "user-pay" principle may be considered, although the experience of other countries, notably the United States of America, shows that high cost to the consumer has been a potent and discriminatory weapon in the hands of unwilling disclosers.

LOCAL BODIES

A somewhat different situation exists in the case of local and public bodies. The previous chapter has detailed the provisions of the Public Bodies Meetings Act. This was amended in 1975 but dissatisfaction is still manifest, surfacing in particular in the hospital boards. There is an attitude barrier here also, and a feeling that the Act "stifles free discussion between Board members ... and developes a whole lot of caucuses. This happens particularly in the area where boards have an equal balance of members of political parties." (Chairman, Wellington Hospital Board. Evening Post, April 4, 1977).

Nevertheless the Act is plain enough, when the necessary resolution can be passed, to exclude the public on the grounds that publishing would be prejudicial to the public interest or cause personal embarrassment. Such a resolution, strategically placed, can be an effective barrier. A New Zealand newspaperman recently cited the case of the resolution being put within 5 minutes of the opening of a city council meeting. It would take a determined citizen, other than a member of the press on the job, to wait about outside the council chamber for the possible re-opening of the meeting.

The ability of local body officers to release information is also subject to constraints. Even though not bound by the Official Secrets Act, like state servants, they have other pressures on them. These may be contractual or professional; they may be fears about job security, promotion etc.

Nevertheless fewer complaints seem to surface about secrecy in local government. The closer proximity of governed to governing is a strong influence for more openness, and the ballot box, local press and persistent attentions

of neighbourhood lobby groups are all constant reminders of accountability. Nevertheless it has been claimed that there is a great deal of ignorance about appropriate access points to local bodies and little official encouragement of suggestions for change.

STATUTORY AND OTHER BODIES

For its population size, New Zealand is lavishly endowed with statutory bodies and the sheer proliferation constitutes a barrier in itself as the citizen is at a loss to know where to go for the information he or she may require. Not every community has a Citizens' Advice Bureau.

These various Boards and Committees have their own individual methods of operation. Although there is considerable independence, many will bear in mind the attitudes and policies of the government department responsible for their servicing.

Some, such as the Standards Council, must observe confidentiality if they are to have the co-operation of those sectors on the community with whom they must work. At the same time, the Council sets a good example through its publications in keeping the public up-to-date with work in progress and completed standards.

If changes in government policy result in increasing public acceptance and expectation of the "right to know", statutory bodies may well follow official examples. One is reminded, however, that this was hoped for when equal pay was introduced into the state service but it still required legislation for the private sector to follow through.

In the professional groups there is considerable variation. Some strictures on publicising had some basis in the prevention of "advertising" which was considered a breach of professional ethics. A recent decision of the council of the New Zealand Medical Association substantially changed the Association's rule barring public statements by members. Formerly the consent of the N.Z. M.A.'s divisional president was required. Members were reminded that they would still need to exercise a reasonable amount of restraint so that what they said could not be interpreted as advertising. They would also have to bear in mind any possible effect on colleagues.

There have also been moves in the professions to break down the image of the "closed shop" by appointing lay members to their self-policing complaints committees. For example, in Law and Medicine.

The activities and views of members of professions are not always accessible. Many produce their own journals where such material is recorded but circulation can be restricted to members. Despite this, a good deal of information is obtainable through the headquarters or officers of professional associations once the names and addresses are ascertained and the right approaches made. These same bodies can act as referral points about the behaviour of individual members of the profession who may be impeding a client's access to knowledge of his or her own affairs.

Agencies which do invaluable work in the acquisition and pursuit of information for the public are libraries, Citizens' Advice Bureaux and other counselling services, and organisations such as the Consumer Council. An interesting new development has been the appearance of consumer affairs specialists in the press and other media. (e.g. "Action File" in the Evening Post "Fair Go" on TV which have joined the pioneering efforts of Consumer Council on Radio N.Z.).

Some of the chief barriers to finding out are purely personal - timidity, ignorance, language barriers etc. and there is a good deal of scope for public education in this direction.

Many of these agencies have themselves been in the vanguard of pressing for greater freedom of information. (See New Zealand Library Association policy statement, Appendix 1). The Archives and Records Association of New Zealand has for instance pressed for a complete reassessment of our archival structures following debate on the maintenance of integrity in the collections of official records and the papers of public figures. "While it was accepted that there must always be provision for temporary restriction of access to certain papers, the association felt strongly that it should be recognised that such documents must eventually become available to bona fide scholars researching New Zealand history." (Evening Post, November 19, 1977). Following a report on the New Zealand situation by the Dominion Archivist of Canada, Dr Wilfred Smith, the Minister of Internal Affairs has promised a review of the Act in 1979 - International Archives Year.

Economic and physical difficulties plague many of the agencies. There are not many libraries operating as depositories for official papers and those that are, suffer from delay and irregularity of deliveries of material. Access to the collections of the National Library, the National Archives, the university and special libraries is restricted, often from sheer lack of space, shortage of staff and other necessary resources rather than deliberate policy. This does not prevent a good deal of reference information and other inter-loan material being made available on request through local libraries. Theoretically the resources of almost every library in New Zealand are available to any resident but this ideal is not always realised practically.

Material may have been effectively traced and retrieved but there are still restrictions in the use to which it may be put. The Copyright Act must be taken into account, and there have been recent calls for the extension of this act to cover photocopying, which would directly affect libraries and other agencies.

Of all the professional groups in our society, it is the news media which has the universally acknowledged task of seeking and providing information on matters of public interest. Sir Alfred North, former president of the Press Council has described the awareness of the Council and newspapers that freedom of information was a precious possession. "It is one to be nurtured in a world where the right to know is so widely and sometimes so insidiously threatened or constrained."

Anything that impedes the task of the Press constitutes a barrier to the free flow of information. The law on defamation, described in the previous chapter, is one barrier, contempt of court another, breach of privilege another.

In its Annual Report to Parliament this year, Consumer Council states "In our opinion, the public's right to know on matters of public concern is often frustrated by the restrictive laws on defamation. We are particularly concerned that the news media often fail to report one or other of our public warnings for fear that the publishers will be sued for defamation by the company concerned." In speaking of this report, the Minister of Justice stated that there was no room in Parliament's programme this year for reform of the defamation laws.

New Zealand has often been criticised for undue caution in its press activities. Some of the reforms suggested in the Defamation Committee's report, if adopted, might well alter this. We have also been accused of a paucity of investigative journalism. Blame for this has been levelled at the legal constraints already mentioned, and the lack of professional experience and training in this type of work. But the journalist is not always free to pursue his or her quest for information. Constraints of time, space and editorial directive must be considered.

Behind the successful practice of investigative journalism lies editorial support and publisher backing. In times of retrenchment, staffs are not enlarged and paper is not used lavishly. Nevertheless, there is evidence of an increase in probing, analytic journalism in the New Zealand press, possibly due to the competitive influence of radio and TV.

New Zealand is a small country, It must allot its resources with some care, but it has never been lacking in the will to do this for an agreed goal. The free flow of information may turn out to be such a goal.

FREEDOM OF INFORMATION LEGISLATION IN SOME OTHER WESTERN DEMOCRACIES

In this chapter there are summaries of the actual or proposed legislation on freedom of information and privacy in a number of Western Democracies.

In a democracy, achieving the desired balance between privacy, publicity of government affairs and secrecy needs constant attention. As other pressures cause society to change the desired balance may need to change also. Not suprisingly different historical and political traditions have resulted in this balance point being different for different countries.

Thus in the U.K. the previous relatively homogenous population and the traditional faith in government can explain the more ready acceptance of secrecy in government affairs than in the USA. There, the traditional distrust of government intrusion into private life can explain the strong pressures for disclosure of information and open government.

UNITED STATES OF AMERICA

The original version of the Freedom of Information Act, passed 1966, established the principle that records of government agencies should be available to citizens on request, except those which come into nine exempt categories:

- Secret National Security or Foreign Policy Information
- Internal Personnel Practices
- Information Exempted by Law
- Trade Secrets or Other Confidential Commercial or Financial Information

- Inter-agency or Intra-agency Memos
- Personal Information, Medical Files, and Other Similar Files
- Law Enforcement Investigatory Information
- Information Relating to Reports on Financial Institutions
- Geological and Geophysical Information, Including Maps Concerning Wells

(1974 CQ Almanac)

After Watergate a Congressional sub-committee was set up to investigate the working of the F.I.A. and especially such matters as delay in dealing with requests for information, costs involved in making requests and in bringing suit to force disclosure. The committee found that there were complicated procedures for requesting public records, long delays, unco-operative manoeuvres such as supplying illegible copies, excessive charges, general harassment. As a result of the Congressional investigation, substantial amendments were made to the F.I.A. in 1974 and became law when Congress overrode President Ford's veto. The amendments were designed to put teeth in the 1966 law, largely through procedural requirements. These included the obligation on each government agency to make available rules of procedure concerning information transmitted within the agency and a description of its organisation and functions to help the citizen establish where to find the information required. Strict time limits were laid down on the decision whether the information was available or not, with right of appeal to the courts. Where the court ruled in favour of the citizen against the agency legal costs would be assessed against the agency. Courts would examine documents in camera to decide if the information was justly withheld and the burden of proof lay with the agency. Furthermore if it was decided that the information was improperly held, disciplinary proceedings would be set under way by the Civil Service Commission.

No records are kept on the total number of requests received by all agencies but they probably exceed 100,000 last year alone. The Defence Department, FBI and CIA receive a large number of requests from individuals wishing to know what files exist on themselves. This kind of request is covered by a Privacy Act (passed in 1974 in isolation from F.I.A.) which

grants an individual wider access to information about an investigation held on himself than on another person about whom he is enquiring.

(Teri Flynn, Listener, 11.6.77).

The major complaint by Federal Agencies about the Act is that it is far more costly and time consuming to administer than anticipated. Reports to Congress have indicated the Act may have cost \$20 million in 1975 and some agencies have found it impossible to comply with the law's ten day deadline.

Classified documents are still beyond the public's reach - the Pentagon alone has 20 million classified documents, and while 38,000 employees of the Defense Department hold authority to classify a document 'confidential', 7,000 'secret', and a mere 300 bureaucrats 'top-secret' this number will not decrease. (There is a further category of classification - Eyes Only, to be seen only by those to whom the document is addressed). Classification depends on the official's political judgement and that tends to err on the side of caution and self protection. (New Republic, 10 July, 1971, 18 September, 1971).

The Pentagon Papers may have resulted in a deliberate tightening of official secrets as the court ruled that no judicial decree may prevent publication of a news story or copy of a government document leaked to the press - i.e. once a government secret is out, the first amendment makes it public property. The sole line of defence for official secrets is classification as such, and classification has become the system the government uses to protect its secrets over a wide range - weapons and communication systems, foreign relations, espionage and counter-espionage - in other words, national security. Watergate showed how far 'national security' could be stretched. There have been attempts to establish procedures for declassification after a certain number of years, and to cut back the number of agencies and individuals with authority to classify, but the problem remains - there is still a need to define very precisely those categories of information vital to national security and for there to be free access to all else.

Moves towards more open government at federal level have been followed by legislation at state level. Forty-nine states now have some form of "open meetings" law, forty-five have state-wide "open records" laws. Though these are not comparable in scope to the federal laws, the momentum for such legislation has generally been increasing in recent years and the laws are often referred to as "sunshine" legislation, allowing public access to state records and meetings.

THE US PRIVACY ACT 1974

Personal and medical files etc. are exempt from disclosure under the Freedom of Information Act but this does not provide the desired balance between free and private information.

The Privacy Act 1974 provides further safeguards against an invasion of the individual's privacy by Federal agencies. Congress considered that detailed regulations governing the collection, type, storage, maintenance, use and dissemination of personal information were necessary. The Privacy Act not only allows the individual to monitor information held about himself or herself but for example regulates the flow and possible misuse of this information within government agencies.

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The New Republic, July 10, 1971, September 18, 1971

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THE UNITED STATES FREEDOM OF INFORMATION ACT IN OPERATION

From "Ms" Magazine "Gazette" - June 1977

FBI surveillance and infiltration of the Women's Movement came to light in the Spring of 1976. At that time, the Church Committee (the Senate Select Committee to Study Governmental Operations with Respect to Intelligence Activities) published its final report, detailing how heavily the FBI and the CIA were involved in watching, reporting on, and occasionally disrupting Americans peacefully exercising their constitutional rights. As a result of the Church committee report, the "Los Angeles Times" and "Ms" Magazine independently made Freedom of Information Act requests for the FBI file on the Women's Liberation Movement.

Any person can obtain this file, as well as any other material specifically referring to herself or himself by writing to The Director, Federal Bureau of Investigation, Washington D.C. The file costs nothing if it consists of less than 50 pages. Files of over 50 pages cost 10 cents per page copying charge. (Thus, the entire 1377 page file on the Women's Liberation Movement costs \$137.70).

One can also write to any other government agency for one's file. The request can be in simple letter form, asking for all specified documents - "all material you possess on the Women's Liberation Movement", "all files, dossiers, documents, or materials referring to myself." If you ask for your personal file, the FBI or CIA requires your notarised request. One should also request that, if the agency considers some portion of the material exempt from disclosure, it must release this material to you with the deletions indicated and specify its legal support for having made those deletions. A response must be made within 10 working days of the request as provided by the Freedom of Information Act.

THE US PRIVACY ACT

Federal agencies requiring personal information from individuals have a duty to state the purpose or purposes to which the information may be put. The following leaflet was enclosed with all demands for income tax in 1976.

Department of the Treasury
Internal Revenue Service

Privacy Act Notification

Pub. 876 (11-76)

The Privacy Act of 1974 provides that each Federal Agency inform individuals, whom it asks to supply information, of the authority for the solicitation of the information and whether disclosure of such information is mandatory or voluntary; the principal purpose or purposes for which the information is to be used; the routine uses which may be made of the information; and the effects on the individual of not providing the requested information. This notification applies to the U.S. Individual Income Tax Returns, to declarations of estimated tax, to U.S. Gift Tax Returns, and to any other tax return required to be filed by an individual, and to schedules, statements, or other documents related to the returns, and any subsequent inquiries necessary to complete, correct, and process the returns of taxpayers, to determine the correct tax liability and to collect any unpaid tax, interest, or penalty.

The Internal Revenue Code requires every person liable for any tax imposed by the Code to make a return or statement according to the forms and regulations prescribed by the Internal Revenue Service (sections 6001 and 6011 and the Regulations pertaining thereto). Individuals required to make returns, statements, or other documents shall include their Social Security Numbers to provide proper identification and to permit processing the returns (section 6109 and the Regulations pertaining thereto).

The principal purpose for soliciting tax return information is to administer the internal revenue laws of the United States. This includes the determination and collection of the correct amount of tax. The completion of all appropriate items requested by the return forms and related data is mandatory except for the Presidential Election Campaign Fund designation on the U.S. Individual Income Tax Returns, which is voluntary.

July, 1977

The Code provides penalties for failure to file a return, failure to supply information required by law or regulations, failure to furnish specific information required on return forms or for furnishing fraudulent information. Other effects of not providing all or part of the requested information may include the disallowance of claimed exemptions, exclusions, credits, deductions, or adjustments resulting in increased tax liability, the loss of Social Security credits, loss or delay in issuance of a refund for overpayment, interest and penalty charges on unpaid taxes, and other disadvantages to the taxpayer.

The routine uses which may be made of tax return information include disclosure in accordance with law to the Department of Justice in connection with actual or potential criminal prosecution or civil tax litigation; to other Federal Agencies; to States, the District of Columbia, and the commonwealths or possessions of the United States to assist in the administration of their tax laws; to other persons in accordance with and to the extent permitted by law; and to foreign governments in accordance with treaties.

Further information concerning the requirements for filing returns and furnishing information may be obtained from any Internal Revenue Service office.

This will be the principal notification under the Privacy Act of 1974 concerning the solicitation of information in connection with any tax return or tax liability of an individual. Additional notices may be given (but are not required) with respect to specific information requests during the course of tax administration activities such as audit, investigation or collection of any tax, interest, or penalty. Please retain this notification with your tax records and refer to it any time you are requested to furnish additional information.

Pub. 876 (11-76)

SWEDEN

It is a basic principle of the Swedish constitution that all official information shall be openly accessible with certain categories excepted. The right to obtain and receive information is listed as one of the fundamental rights of the citizen guaranteed by the constitution, along with freedom of the press, freedom of assembly, of association, of religion etc.

The Freedom of the Press Act guarantees every Swedish citizen free access to official documents "to further the free interchange of opinions and enlightenment of the public" and then sets out a list of clearly defined exempted categories. "This right shall be subject only to such restrictions as are demanded either out of consideration for the security of the Realm and its relations with foreign powers, or with regard to the activities for inspection, control or other supervision carried out by public authorities, or for the prevention and prosecution of crime, or in order to protect the legitimate economic interests of the State, communities, and individuals, or out of consideration for the maintenance of privacy, security of the person, decency and morality."

Documents are not classified as a routine measure before they are requested except for those specifically exempted for national security. After a specific request it is then decided whether the information should be available or not, the applicant having the right of appeal to higher authority. There is, however, no right of appeal against any decision of the head of the Ministry.

The basic principle is that all information is freely available unless legislation authorises secrecy and this places much responsibility on officials to make appropriate decisions on specific information. Sweden has virtually no provisions to ensure that the privacy of the individual is not abused; any person may get access to government files concerning any other individual.

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The Swedish Constitution and Freedom of the Press Act.
Report of the U.K. All-Party Committee on Freedom of Information
McMillan, New Zealand Law Journal, July 1977.

FINLAND

"The Law on the Public Character of Official Documents", 1951, allows citizens to inspect any public documents. A denial can be appealed through the courts and it is as much an offence to withhold public documents as to disclose secret ones.

However, much material is exempted from disclosure. "Proposals, drafts, reports, opinions, memoranda or other studies" shall not be made public. Much factual, statistical and scientific material is therefore exempt from disclosure. Regulations can also be used to withhold information concerning national security, foreign relations, law enforcement, personal privacy and business affairs of the government or individuals.

REFERENCE

McMillan, New Zealand Law Journal, July 1977.

NORWAY AND DENMARK

These countries both enacted a Law on Publicity in Administration in 1970. The laws seem to indicate that secrecy is to be the rule and disclosure the exception. Both provide exemptions for "opinions, drafts and proposals" and give very broad grounds for withholding information. For instance in Denmark, material can be withheld out of consideration for the "public's economic interests" or "the accomplishment of public control, regulation or planning activities".

In both countries applicants must specify the "cause to which the documents are related", and the agency need not release material immediately.

REFERENCE

McMillan, New Zealand Law Journal, July 1977.

CANADA

The Canadian Human Rights Act passed in June 1977 sets out a comprehensive set of rules against discrimination at the federal level and contains measures to protect the privacy of individuals. For the first time in law, Canadians are given:

- Right of access to personal information held by the government.
- Right to request correction of that information where it is not felt to be accurate.
- Right to control the use of that information.

The Bill also provides for a mechanism to control and co-ordinate the collection of information and the creation of new information banks. In his statement to the Justice and Legal Affairs Committee of the Canadian House of Commons, the Minister of Justice pointed out that this was not freedom of information legislation which is designed to allow the public access to general government information, but was intended to ensure that individuals are able to protect their privacy by having the right to control the use of, and to see, personal information on them held by the federal government. The concept of a Privacy Commissioner was introduced - an ombudsman-like officer - one of the members of the Human Rights Commission, to whom an individual could complain when he or she is unjustifiably denied access to certain information. The Privacy Commissioner would recommend a course of action to a Minister, and could also report to Parliament if his recommendations were not accepted. This is unlike the situation in the U.S. Privacy Act where at all levels decisions are taken by non-elected individuals.

If it is not in the public interest to reveal to an individual certain personal information held by the government the public interest must take precedence.

Situations where free access to records may be denied are records where in the opinion of the Minister, disclosure of information:

- 1) Might be injurious to international relations, national defence or security, or federal-provincial relations.

- 2) Would be likely to disclose information obtained or prepared by any government institution or part of a government institution that is an investigative body:

- a) in relation to national security.
- b) in the course of investigations pertaining to the detection or suppression of crime generally, or
- c) in the course of investigations pertaining to the administration or enforcement of any Act of Parliament.

An exemption is also provided to a person's right to have access to his or her personal information when this might reveal personal information concerning another individual. In protecting one individual's right to privacy, the privacy of another individual ought not to be violated. This exemption does not mean that an individual will be prohibited from seeing all the information on his file, but only that he or she will be restricted from access to those portions relating to another individual.

A positive duty is placed on a Minister responsible for a federal information bank to publish, at least once a year, an index identifying each information bank and the types of records stored in it, and to ensure that the published index is readily available throughout the country.

REFERENCES

Bill C-25 (the Canadian Human Rights Act) as passed by the House of Commons (Canada) 2 June, 1977.

News Release Communique, 10 March, 1977 - Statement by Minister of Justice and Legal Affairs Committee, House of Commons (Canada).

Bill C-225: Private Members Right to Information Act.

UNITED KINGDOM

For some time there has been dissatisfaction with official secrecy, and two inquiries have been held. In 1969 a Government White Paper "Information and the Public Interest" described types of information being released and recommended that the practices continue. Later the Franks Committee examined the Official Secrets Act and recommended changes in the penal sanctions which would relate to national security, foreign relations, the currency reserves, cabinet documents, information which could impede the process of criminal law, information which could invade personal privacy or where information could be wrongfully used for securing financial gain. In 1976 a new Official Secrets Bill was published embodying the proposals of the Franks Committee, except that cabinet documents not dealing with national security, and information relating to economic security are excluded from the protection of criminal sanctions.

The effect of this Bill has not been to improve the citizen's right to know, although the demand for freer availability of information has risen. Since 1976 a bi-partisan "All Party Parliamentary Committee" has been formed by M.P.s. The Committee has produced a suggested Freedom of Information Bill

The proposed Bill would confer six major civil rights on the citizens of the United Kingdom:

- The Right to Know.
- The Right of Privacy. Personal information shall not be freely divulged.
- The Right to Inspect. Each individual would have the right to inspect records concerning him personally and check their veracity. (Special limitations would be made for categories of police information).
- The Right to Correct (wrongful information about an individual).
- The Right that only valid information may be disseminated and used by the administration. Each part of the administration would be required to ensure that their information be as accurate and valid as possible before relying on it.
- The Right of Rapid Action before the courts to enforce the above rights, in which the burden of proving the necessity of withholding information lies with the government.

The proposed Bill would also give access to all official information subject only to certain exceptions viz:

- Infringement of personal privacy. Information may be released however for statistical purposes, to Parliament, to the Parliamentary Commissioner (Ombudsman), or in response to a court order.
- Cabinet Minutes shall not be available for two years, except that information concerning defence or the relations between the U.K. and foreign states shall not be available for 20 years.
- Military Information.
- Police information compiled for bringing a prosecution, identities of informants or material which would deprive a person of a fair trial shall not be disclosed.
- Internal security information, when disclosure would interfere with criminal proceedings and a fair trial, or interfere with security measures to protect the life and health of individuals.
- Trade secrets and financial information given by private concerns to the government.

Before release, information must be categorised to distinguish between factual information and unproven assertions or rumours.

Information may be specifically exempted from disclosure by statute:

- Exemptions shall not apply to Members of Parliament.
- An improper motive on the part of those withholding information shall nullify an exemption.
- Each year the Parliamentary Commissioner (Ombudsman) shall submit a report to Parliament stating all those occasions when applications for information have been refused, identifying the officers involved, and stating reasons for non-disclosure.

- Courts may consider records in camera when deciding whether information was improperly withheld.
- Penalties for wrongful withholding are to be at the discretion of the courts, but failure to maintain proper records shall be subject to a fine up to £2,000.

The proposed Bill also states requirements for record keeping and publication. Individuals would have the right of action through the courts which may order production to the plaintiff of any records which have been improperly withheld from him.

The All Party Committee believes that a Freedom of Information and Privacy Act is a workable proposition and the advantages far outweigh temporary disadvantages during a transition period.

Recently, a Cabinet White Paper on the Official Secrets Act has been released. This White Paper suggests the abolition of Section 2 of the Official Secrets Act which makes it an offence for an employee of the Crown to communicate any information whatever without authority.

An Official Information Act would replace Section 2. This would protect with legal sanctions information about defence, internal security, international relations, law and order, and private information given confidentially by citizens or companies to the government.

The classification of material under any of the above headings would not need to be justified by officials who wished to withhold information under the proposed new Act.

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- U.K. All Party Committee Report and Draft Freedom of Information and Privacy Bill, 1976.
- McMillan, New Zealand Law Journal, July 1977.
- The Guardian Weekly, July 30, 1978.

AUSTRALIA

In 1973 an Inter Departmental Committee was set up to look at the possibility of a Freedom of Information Act along the lines of the USA Act but with modifications to suit Australia. The IDC tried to accommodate the views of all departments and reach a consensus. Its report, issued in December 1974 has been interpreted as recommending even less access to information than Australians already had.

Following this, one of the five members of the Royal Commission on Australian Government Administration enlisted the help of a lawyer to produce a draft freedom of information bill which was published as an Appendix to the Commission's report in 1976.

Since the IDC's first report government secrecy has been undermined by both the Administrative Appeal's Tribunal Act 1975 and the Ombudsman Act 1976. The committee was reconvened and produced another report, "Policy Proposals for Freedom of Information Legislation", in November 1976 which left the basic policy decision to the government. The main criticisms of these proposals have been:

- 1) Ministers rather than independent tribunal have the final say in matters affecting national security, defence, international relations and Commonwealth State relations.
- 2) Some of the exemptions are so vague that they can be too widely interpreted.
- 3) Documents in existence before the legislation comes into force are exempt from disclosure.
- 4) The amendment of the present 'secrecy' law is not part of the proposal.
- 5) There is no secrecy classification of documents which may prevent the release of less strategic information.
- 6) There are no procedural safeguards which the U.S.A. found necessary to add.

The Freedom of Information proposals put forward in the Appendix to the Royal Commission's Report in 1976 are much more specific. The main points are:

- 1) The departments or agencies are responsible for indicating fully their functions, indexing their material and making it available to the public.
- 2) The exemptions are more precise and in some cases even list 15 or 16 exemptions to the exemptions.
- 3) There is provision for the amendment of the 'secrecy' law along the lines suggested by the U.K. Franks Committee.
- 4) There are enforcement provisions so that the spirit of the Act is observed.
- 5) The Administrative Appeals Tribunal is given greater power than in the legislation suggested by the IDC although Ministerial authority is given some protection.

It is expected that the Australian Government will eventually introduce a Freedom of Information Bill into Parliament.

THE SCIENTIST AND FREEDOM OF INFORMATION

The following is an examination of attitudes to freedom of information in science in New Zealand today. The scientist's dilemma, whether his chief responsibility lies to the public or to his employer, is described, and the moral, legal and financial restraints upon him are outlined. This is followed by summaries of several official viewpoints on the two issues of the DSIR scientist's freedom to disclose information and his or her freedom to express opinions. The Association of Scientist's proposal for a tribunal is described. The final section gives some arguments for the need for greater freedom of scientific information in New Zealand.

Traditionally the scientist has seen his role as revealing and interpreting facts. He has left the decisions to others about how these facts are used and how widely they are disseminated. Rising concern about the impact of technology and increasing urbanisation on the environment has caused him to question his traditional role and ask if it is enough just to provide the facts. Can the scientist disassociate himself from decisions on how knowledge is used?

The need for reassessment was recognised by J.D. Atkinson in his recent book, "D.S.I.R's First Fifty Years", in which he states: "For almost fifty years D.S.I.R. was remarkably successful in keeping outside political arguments. With increasing involvement in environmental questions this will no longer be possible". Atkinson goes on to accept that as the D.S.I.R is the principal scientific adviser to government, the D.S.I.R scientists must accept some curb on their freedom to speak out publicly on scientific matters of political sensitivity. But many scientists inside and outside D.S.I.R do not agree that there is a need for such curbs. The environmental questions that trouble our society today have triggered demands for freedom of information in most fields of government. Scientists who are deeply involved in environmental issues are increasingly aware of the dilemma in which they are placed.

What Is The Scientist's Dilemma?

There can be a conflict of conscience between a scientist's responsibility to the public and the restrictions placed on him by his employer not to pass on information or express an opinion publicly. There are two main issues:

- 1) Disclosure of Information The scientist through his work may have access to information which he feels should be disclosed in the public interest. But the employer regards this information as his own, and legal obligation or loyalty to the employer compels the scientist not to reveal it. If he can't persuade his employers or superiors to reveal it he is in a moral and legal dilemma, torn between loyalty to his employer and loyalty to the public as well as reluctance to break the legal constraints that may bind him.
2. Free Expression of Opinion. Employers can exert pressure to prevent a scientist freely expressing an opinion. The employer may have a legal right to restrain him, but as well he can exert economic pressure through salary and promotion prospects and, in private enterprise, through the threat of dismissal. Pressure can also be applied psychologically to persuade a scientist to remain loyal to his employer.

Legal Constraints On Freedom of Scientific Information in N.Z.

- a) Privately employed scientists are bound by the Official Secrets Act when doing Government work, the law of copyright and by certain obligations of confidentiality resulting from their contract of employment.
- b) Government Scientists carry out most scientific work in New Zealand and they are bound by the Official Secrets Act and Public Service Regulations. In law and in fact these provisions do not have the draconian effects that they might appear to have. This is the view of Professor K.J. Keith given in an article in the N.Z. Law Journal. Practice within a Department rests heavily on a doctrine of implied authorisation flowing from each public servant's job. Senior public servants exercise a considerable degree of personal judgement in deciding what disclosures of official information they can make and to whom. More junior public servants may have very little discretion or none at all.

Official Viewpoints

During the last few years several official attempts have been made to clarify the situation for DSIR scientists on the two issues of freedom to disclose information and freedom to express opinions.

VIEW OF HEAD OFFICE DSIR

In July 1975 Head Office DSIR issued an article on professional ethics in the DSIR Newsletter. In dealing with the question of disclosure of information it made the point that the scientists must be guided by what would be professional conduct. Firstly, the scientist is an employee with responsibilities to his employer - unlike the scientists of an earlier day who were self-employed and were therefore free to do whatever they liked with their results. The implication here is that the scientist's results are the property of his employer. Secondly, the DSIR scientist should think of himself as similar to a lawyer who is a member of a legal partnership. The lawyers responsibilities lie to his partners and his clients. A legal firm must do all it can to safeguard the interests of its clients and the DSIR scientist must also put the interests of its clients first. Whenever the scientist as an employee does work for a private client or another Department, these are his clients, and the client's permission must be sought before any of this work is published or divulged to a third party. In many situations the Government is both employer and client.

In answering the question to what extent the DSIR scientist acting in a private capacity can express opinions on government policy, or on issues of the day, the following points were made:

- a) He must have the Director-General of DSIR's approval before issuing statements containing any criticism of Government.
- b) In the public view the DSIR scientist is always speaking in that capacity and therefore he is unable to speak out as a private individual.

- c) The DSIR scientist is not free to criticise publicly government policy in areas in or close to his own field of expertise.
- d) Outside the Department the scientist is free to take part in a learned society's critical appraisal of some government policy as long as his name is not used and the comments are published in the name of the society. He is not free however to use unpublished departmental information without formal approval.

Designation of Special Topics. The article in the July Newsletter was followed by a directive in August 1975 designating four subjects as special topics on which nominated officers only were authorised to coordinate departmental statements. These topics were:

- 1) Beech Forests.
- 2) Halomethanes In The Atmosphere
- 3) Potato Cyst Nematode Disease
- 4) Nuclear Power

(By May 1978 halomethanes in the atmosphere was the only one remaining as a special topic).

VIEW OF MR GANDAR, MINISTER OF SCIENCE & TECHNOLOGY

The article on professional ethics and the designation of special topics were viewed by many scientists as attempts to silence dissent and in the press they were referred to as "gagging" directives. In a talk to the Association of Scientists in October 1976 Mr Gandar, Minister of Science and Technology, disputed this interpretation and put the Government's view on science and ethics in New Zealand. He noted that in practice there is a wide delegation of authority in DSIR to make public statements. This is illustrated by the frequent interviews given by scientists to newspapers, television, and radio and by the many public lectures given. But when exercising this freedom scientists must be sure that they have an understanding of the whole problem and not just the facet which involves their specialist knowledge. They must also consider whether it may be unethical to release that information at that particular time if it has been commissioned by a client and whether the information's release is in the public interest at that time. In Mr Gandar's view the article on professional

ethics in the DSIR Newsletter was not a directive. It simply pointed out to scientists the ethical issues involved and reminded them of their responsibilities as public servants when they speak out. The designation of special topics was a means of ensuring that a full and balanced view of the whole subject was built up. All the topics were ones of public concern where scientific evidence was contentious and where several disciplines were involved in seeking a solution to the problem. This ensured that the public could receive a balanced view of the scientific aspects of each topic.

VIEW OF DR BUTLER

The official viewpoint was further expanded by Dr G.W. Butler, Assistant Director-General of DSIR in a talk to the forum on Professional Ethics and Secrecy in 1977. He stated that under the Act setting it up, DSIR is obligated to communicate its findings to the public. He warned however that there can and should be reluctance by the scientist or scientific administrator to publish work outside scientific circles until there is sufficient factual data to be sure of the conclusions. The science administrator sees the situation from a wider point of view and may have to convince the scientist that release of his research results on one aspect of a problem should await reports on other aspects so that it can be viewed in its proper perspective. With many questions of concern to society the decision rests ultimately on value judgements. The "Holmes Report", "New Zealand at the Turning Point", puts it:

"Few decisions these days seem susceptible to a clear 'right' or 'wrong' solution. We want to know all the options, with all the costs and benefits attached to each. Different groups, depending on the values they cherish most, will attach different weightings to these costs and benefits."

Dr Butler goes on to consider the question of whether a Government scientist is responsible to the Government through his Minister or directly to the public and in answer quotes the conclusion of the "Holmes Report", which states:

There are particular problems associated with any attempt to reduce the degree of secrecy covering the advice given to a minister by his public servants. There must be mutual trust between a minister and his advisers. This can only be based on the exercise of loyalty and discretion by the advisers. If a public servant wishes to remain effective as a ministerial adviser he must place constraints upon himself when dealing with the press and the public. An adviser who is tempted to publicise his disagreement with the ideas of his Government becomes in effect a political opponent and cannot possibly maintain the Government's confidence. He will probably become isolated in the decision-making process and the Government will turn to other advisers - who may not be as competent.

Dr Butler concludes:

When a scientist, by considering a problem which is essentially interdisciplinary only from the point of view of his own specialised knowledge, becomes too closely involved in advocating a particular course of action, he may lose objectivity and his opinion may conflict with the opinion of other specialists mainly because none of them are fully knowledgeable on all aspects of the problem. In such cases there is obviously an important need for a departmental view to avoid confusion of the public. A scientist who appropriates to himself the right to decide what of the information in his possession should be publicly released could well damage the integrity of the Department and throw into question its enviable reputation for objectivity.

Proposals For A Tribunal

The Association of Scientists believes however that more must be done to safeguard the democratic rights of the dissentient scientist. A sub-committee of the Council of the Association of Scientists have been formed to draw up proposals for legislation to set up a politically neutral tribunal with power to adjudicate in cases involving disclosure

of scientific information where human life, health and the environment are involved. It is planned that such a tribunal should act speedily and be able to compel publication of the information if it rules that the public interest is best served by publication.

Should There Be Greater Freedom Of Scientific Information In N.Z.?

Many scientists are now impatient of the official viewpoint and question whether these curbs are really necessary. They feel that their views may be watered down by the time they pass upwards through official channels. Information can be so phrased that the public is not aware of its significance. The delay occasioned by the need to form an official viewpoint before informing the public can be politically advantageous to a government as by the time the information is released it may be too late to reverse a policy decision. New Zealand is a very regulated society, centrally controlled and paternalistic. The official attitude often is that the public cannot be trusted to react wisely if entrusted with all the information about an issue. This may be an underestimate of the public's ability to assess a situation if given all the available facts. People are already used to the situation of experts differing, e.g. in courts of law, in the fields of economics and sociology etc. Debate is part of the democratic process and our parliamentary system is based on putting forward opposing points of view. The social, political and environmental effects and acceptability of a new development in science or technology can only be assessed by an exchange of views between the scientists and the public. The process of absorption of ideas and the emergence of consensus is slow and could be going on while an 'official view' is still being formed. To publish an 'official view' and only then allow public discussion makes it more likely that rigid positions will be taken and the need for changes may take longer to be recognised.

Many feel that there needs to be a change in the basic attitude about the public's right to know. The reasons why decisions are made should always be made public as well as the scientific background on which they are based. The public should be kept informed about who are making particular recommendations, and why. Public opinion should be sought in judging what is or is not in the public interest. At present the stamp of confidentiality is often routinely applied whether necessary or not.

Responsibility Of The Media

The Chairman of the Commission on Nuclear Power criticised the media for failing to give adequate publicity to the evidence being presented to the Commission. If scientific information is to be released quite freely the media will have to act very responsibly so that the public does receive all aspects of a case and not just those with more sensational qualities that generate eye-catching headlines.

CASE STUDY - INFORMATION ON DSIR TESTING OF WATER HEATERS

The editorial of National Business Review, June 21, 1978, was critical of the DSIR for failing to release information on tests it claimed DSIR had carried out on solar water heaters. This appeared to be an example of the DSIR putting its duty to its clients, the manufacturers, before the interests of the buying public.

Upon investigation, however, this appeared to be an example of the scientists' reluctance to release premature information that is tentative only and which may be misleading. The testing done had some limitations and was criticised by solar water heater manufacturers because it was indoor. The question of testing became more urgent with the announcement in the Budget of a \$500 interest-free loan for the purchase and installation of an approved brand of solar water heater. Decisions had to be made then about who would approve the heaters, who would test them and how. It has now been decided that the Building Research Association of New Zealand (B.R.A.N.Z.), will grant an approval certificate. The DSIR will undertake appraisal tests on heaters submitted by manufacturers, using indoor tests initially. New, more extensive outdoor tests are planned to begin in September, but it will be six months or more before valid results can be obtained and used as a basis for approval certificates.

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THE NEED FOR FREEDOM OF INFORMATION IN THE PRIVATE SECTOR

In this paper the suggestion is made that greater disclosure of information about companies could lead to more self-regulation and reduce the need for government controls.

Freedom of Information is seen by some as being necessary to control the Government run portion of our community. There is also a case for requiring Freedom of Information in order to control the private enterprise portion of our community.

The fact that we are not content with how the private sector functions is demonstrated by the maze of laws and regulations that now constrain it. The more regulations enacted, the more the feeling grows that there are arrangements, establishment agreements and "rip offs". Would the provision of more facts help to dispell this feeling?

In theory competitors arise to limit the profits of a price leader. This implies that profits need to be disclosed for a competitive system to work. However, it is only the Public Companies which are required to make their accounts available and these are more notable for what they do not disclose than for what they do disclose. The recent JBL and Securitibank collapses are examples which are relevant here.

A private company can be registered and have the liability of shareholders limited to the registered capital. Unscrupulous people can obtain considerably more credit than this for such a company then waste, lose or divert the funds to their use. Its accounts do not have to be made public and it is impossible to discover whether they are making "rip off" profits, placing their creditors in jeopardy or trading fairly and reasonably.

Again, concern is often expressed that in public companies "Managers manage for the good of managers". Unlike the public service with its published salary scales there is no way in which anyone can discover what the total emoluments are for managers or what the costs and profits are on particular products.

There does then seem to be a case for requiring greater disclosure of the affairs of private and public companies, partnerships and other trading organisations. At most such disclosure could regulate their affairs, stimulate competition and promote innovation while at least it could help to allay some suspicions.

A practical method of achieving this would be for all Inland Revenue records to be made public documents. It would then be much easier for a potential or actual creditor to check whether a company was a bad risk because it was making low profits and the manager or proprietor had an unreasonable salary. Anyone would be able to monitor the rewards of organisations and individuals. This level of visibility would remove the need for many regulations and also the problem of enforcing them. The checks and balances of society would be enhanced.

PRIVACY AND FREEDOM OF INFORMATION

The expectations of the community concerning privacy need to be reconciled with the new information technology and freedom of information.

EXPECTATIONS CONCERNING PRIVACY

The individual usually considers that personal information about himself should be considered "private" information, i.e. available to others only at his discretion. Thus there is general agreement that information given by an individual to his professional advisers should not be available to others unless permission is given by the individual concerned. People do not expect that personal information about them on the files of one government department will be available to all other departments. Since an enormous amount of the information stored by government and other bodies is in fact personal information concerning individuals it is clear that this must be exempt from disclosure in any move towards freedom of information.

BEFORE THE NEW INFORMATION TECHNOLOGY

Before the advent of computer data banks the protection of personal information depended on the confidentiality of the relationship between an individual and his professional advisers and also on the fact that files of information held on cards or in folders in one place were only accessible to a small group of people who could be readily identified if an intrusion into an individual's privacy occurred. There seemed to be very little concern among the public that anyone determined to collect and use private information against the interests of an individual or a group could in fact find ways and means of doing so.

THE PRESENT SITUATION

This level of trust in "the system" disappeared when computerised filing and information systems began to make an appearance. Fears have been expressed throughout the community that more personal information will be collected, it will be available to more people and even transmitted from one place to another over public communication channels. People are also concerned that personal data will be so easily manipulated, combined, correlated and analysed that the temptation to do this secretly, in order to gain power over individuals, groups or even the whole community, will be too great to resist.

The New Zealand Computer Society says:

"The ready availability of large capacity, compact data files at low cost will make it practical to collect and store ever increasing volumes of information in computer systems. More importantly, it is going to be possible to correlate data on different files with ease and produce comprehensive reports on individuals and organisations alike

"So powerful are the possessors of this information likely to become, and so threatening to individual rights is the potential, that a complete re-think of the ethics of information handling must come; and the enactment of laws to control the holding of personal and sensitive information on computer files will be inevitable. It will be necessary for such laws to be agreed and enforced on an international scale."

All new technology brings both advantages and disadvantages. If we are going to "re-think" the ethics of information handling we must try to ensure that in protecting ourselves from what we see as unnecessary intrusions into our private lives we do not reduce the new potential of government to carry out the tasks we willingly delegate to it. For example an Auckland postmaster recently found an unfortunate reference to forgery on a print-out of his Wanganui Computer Centre file. The reaction to this did not seem entirely logical. Before this data bank existed the postmaster would not have been able to see his file and would not therefore have been able to check its accuracy. In this case the new technology seems to be working for the citizen not against him.

In another case involving the same data bank, a man was arrested as a deserter when he went to renew his driving licence. The only blame which can be attached to the Wanganui Computer Centre system in this case is that it has helped to increase the efficiency and level of cooperation of the police and traffic departments. Yet many members of the public thought this man had been treated most unfairly. Does the public really want to limit the efficiency of their law enforcement officers? Do those who live outside the law have to be given a "sporting change"?

PROTECTING THE INDIVIDUAL'S PRIVACY

In a world of sophisticated information technology the individual's right to privacy needs further protection by legislation which gives him the right of access to his files, the right to control the uses to which they are put and the means of enforcing these rights.

The necessity that information on personal files be private is one of the limits on freedom of information. However the right to control the uses to which the files are put implies knowledge of the files and their intended use in the first place. Therefore to protect this right greater freedom of information is required. The existence and purpose of all information systems should be publicly known as well as the nature of the data they hold and who has legitimate access to them.

New Zealand privacy law is not yet as comprehensive as this.

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TOWARDS FREEDOM OF INFORMATION AND OPEN GOVERNMENT

A SUMMARY OF OPTIONS

All the options listed below could improve the flow of information within the community and encourage more open government. However, they clearly divide into two groups. Options 1-3 require no fundamental changes in our system of Parliamentary democracy. On the other hand options 4 and 5 are more far reaching in their effect.

1. INFORMAL CHANGES

Customs; attitudes; traditions; setting new guidelines. Fostering cooperation and participation rather than confrontation.

2. AMENDMENTS TO THE PRESENT LAW

Official Secrets Act; Defamation laws. With more information available and greater freedom for the media to report, more "accountability" might be introduced into government and business.

3. A FREEDOM OF INFORMATION ACT

Giving a positive right to certain information and making public the principles on which information is classified could go some way towards checking a further shift in power from people and Parliament towards cabinet, the Executive Council and the bureaucracy. There are however important lessons to be learnt from the experience of the USA, the UK and Australia.

4. A CONSTITUTIONAL BILL OF RIGHTS

We have not attempted to collect and assess the arguments for and against such a Bill, but in the course of our study the idea came up many times.

We feel it merits public and government attention. The following quote from the New Zealand Listener Editorial, 5th November 1977, is a starting point for discussion.

"It is impossible to legislate for freedom but it is possible to introduce an irremovable, statutory list of personal rights that, if widely acknowledged, will make a country fonder and more jealous of its freedoms".

5. SUBSTANTIAL DECENTRALISATION OF GOVERNMENT

The work of Government would become more visible and those involved more readily held accountable for their decisions.

The work of the N.Z. Planning Council on Regionalism is relevant here. Many practical problems would need to be solved.

The Report of the Royal Commission on Australian Government Administration 1976, contains the following statement:

"6.1.6. "The arguments on which this demand for power sharing rests are threefold. First, that it would make government more effective; that members of the community can bring knowledge which is more intimate than, and frequently an expertise which is superior to that possessed by the bureaucracy; that programmes managed without the participation of those to whom they are directed have a notorious record of failure. Second, that participation is a valuable end in itself and should be seen as an important, if subsidiary, objective of all government activities. Third, that by skilful devolution and decentralisation of administrative procedures and the use of modern technology it is possible, even in large and complex societies to come closer than even before to situations where decisions can be made substantially by consensus among those primarily concerned."

APPENDIX - THE VIEWS OF A SELECTION OF OTHER ORGANISATIONS

The material in this Appendix is printed with the permission of the organisations concerned.

The N.Z. Library Association

ACCESS TO INFORMATION - MAY 1978

The NZ LIBRARY ASSOCIATION asserts that:

- Free circulation of information safeguards our democratic society.
- The members of our society have a fundamental right of access to information. A basic right of citizens in a democratic society is access to information on matters which affect their lives. At times the interests of the individual have to be subordinated to the interests of the community in such matters as development of energy and mineral resources, industry, town planning, transportation, etc. Citizens have a right to be informed of the facts involved and to participate in the decision-making process, e.g. when activities such as massive alterations to the landscape and its use are proposed. The right to be informed, to be consulted and to intervene is essential and fundamental to the democratic process.
- Equally, members of our society have a right to privacy and to protection from misuse and exploitation of information.

A balancing right to that of access to information is that of the community as a whole, and of its members, not to suffer from the misuse and exploitation of the freedom of access to information. There is a growing trend to store information relating to individuals in centralised computer data bases. This undoubtedly facilitates the activities of administration, law enforcement, commerce and industry,

but citizens must be assured that information relating to them is not detrimental to their interests through inaccuracy or through exposure to the scrutiny of those who have no proper interest in it.

- It is a basic function of democratic government to ensure and balance these at times contradictory rights: that citizens are not denied access to information, and that their privacy is protected.

Those who govern must ensure that citizens are not impeded in access to information touching upon themselves as individuals or as members of the community, and that they are protected from inaccuracy and improper exploitation of information.

- Libraries and particularly public libraries, are prime agencies for the dissemination of information. Libraries have a duty to acquire, organise and circulate information freely to the communities they serve.

The basic aim of library services is the acquisition, organisation and circulation of information. Librarians have a duty to fulfil this aim, particularly as it relates to the collection, organisation and circulation of information on matters which affect individual members of the community or the community as a whole. The New Zealand Library Association supports all measures which will improve the ability of libraries to serve as public access points for information.

- Government agencies - national and local, Parliament, State Departments, public corporations and other authorities - have a duty to make reports and other documents widely available for consideration by all citizens. The best way of doing this is to use the existing nationwide network of public libraries, which are open for all to use.

It is not enough to send a selection of government publications to some libraries weeks after they have been released. If the public is to participate meaningfully and effectively, there must be a quick and complete supply of new laws, reports and documents to public libraries as soon as they become available. Citizens, especially if they live outside Wellington, should not have to rely on news media reports alone for their facts.

The New Zealand Library Association recognises that it may be difficult at times to reconcile these principles of access to information and protection against its misuse, but it insists that the right to be informed should be the chief consideration.

Environmental Council

REPORT OF WORKING PARTY ON THE ENVIRONMENTAL MOVEMENT - MARCH 1978

Excerpt from Convenors Statement:

7. Without prejudice to its final Report it might now be helpful for the Working Party to record some of the impressions it has gained during the course of its studies.
 - a) That the environment movement is very strongly based, has wide public support and possesses a great deal of expertise over a broad range of subjects. It can handle raw data and information and has access to considerable scientific and technical resources when these are necessary. While many groups concentrate on particular and specific problems, there is rapidly increasing appreciation that these must be considered in their relationship to the total Biosphere which is one and indivisible and within which all events are interacting and interdependent. Many believe that, without a prompt solution being found to global environmental problems, survival itself may be in peril and this accounts for the passionate dedication which is frequently displayed.
 - b) That free access to information is a prerequisite to effective public participation and that the release of selected information on what are officially regarded as suitable occasions does not meet this need. While the granting of 'locus standi' to public interest groups, which may now lodge objections and appeals under Town & Country Planning procedures, is generally welcomed as another step towards open government, an adversary situation is still implied and that is precisely what we are now seeking to avoid.
 - c) That, since environmental problems are multi disciplinary in character, and frequently cover a wide range of activities, there is urgent need to ensure that all available information

is brought together and co-ordinated so that it can flow freely to those who need it. There is some evidence that, on occasions, information does not move freely even in the department which produces it. In view of the way in which environmental responsibilities are at present scattered across a large number of departments and agencies, it seems unlikely that free availability of information can be achieved without some central organisation being given the responsibility and means to provide this service.

Without expressing a final opinion in reply to the Minister's request, it is obvious that effective public co-operation will depend much more on the attitudes of all concerned, than on any rules which are promulgated for the purpose. Legislation is unlikely to be introduced unless there is strong political will to do so (this substantially depending on strong public opinion) and a long period of time is certain to elapse while the considerable public debate which is sure to attend such a measure takes place. Most of the information required about environmental matters is factual and does not come within sensitive areas as do some other government activities. Given the will to do so, and the right amount of understanding and co-operation from both sides, very considerable progress could be made now without waiting for rules formalised by 'guide lines' or legislation.

New Zealand Consumer Council

The New Zealand Consumer Council believes strongly that in all appropriate cases, Government test information on consumer products should be made freely available to consumers in a form that they can understand. Such information is collected by the expenditure of public money and should therefore be made available to the public.



NEW ZEALAND ASSOCIATION OF SCIENTISTS

(INCORPORATED)

Hon. Secretary: C.P.O. Box 1874, WELLINGTON, N.Z.

POLICY ON FREEDOM OF INFORMATION

The main aim of the New Zealand Association of Scientists is to secure the widest application of science to the welfare of society, and in so doing to advance the status of science and scientists. In accordance with this aim the Association seeks to promote the free spread of scientific knowledge and the fullest use of all scientific studies to the advantage of the community. Accordingly the Association is opposed to any restrictions on the freedom of the scientist, whether in government or private employ, to publish the findings of his/her research and to speak openly about current scientific issues.

While recognising that information of national security should be restricted, the Association believes that internal issues such as forest management, genetic engineering and energy policy should not be bound by the Official Secrets Act. On such issues informed public debate, in which the scientist should be free to participate, is invaluable. The Association is therefore keen to see the Official Secrets Act reviewed, and plans to make its policy known to the Committee on Official Information currently sitting.

It is part of Association policy to press for the establishment of an independent, non-partisan "ethics tribunal", which could adjudicate swiftly on whether particular scientific information should be made public in cases affecting human life, public health or the environment. The tribunal would act as a channel for scientists in both the public service and private industry who have information they believe should be made public. Council of the Association is currently drafting legislation for the establishment of this proposed ethics tribunal.

September 1978

FURTHER REFERENCE MATERIAL

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